

**Canadians for a
Nuclear Weapons Convention**



**Rassemblement canadien pour une
convention sur les armes nucléaires**

Annual Report to the Canadian Pugwash Group

September 2019

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| Canadians for a Nuclear Weapons Convention

Rassemblement canadien pour une convention sur les armes nucléaires

A project of Canadian Pugwash Group 56 Douglas Drive, Toronto, ON M4W 2B3

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CNWC Report to Canadian Pugwash Group (September 2019):

Submitted on behalf of the Steering Committee of Canadians for a Nuclear Weapons Convention, a project of the Canadian Pugwash Group. This report covers the period September 2018 through August 2019.

1. Murray Thomson

Of course, this past year was most notably marked by the death of our friend and colleague. We knew this time would come, but the loss is nevertheless profound. We will have an opportunity on Friday Morning (27th) to honor his memory. The following links are to a tribute on the CNWC website:

(<http://nuclearweaponsconvention.ca/2019/05/06/tribute-to-murray-thomson/#more-367>)

and to the obituary in *The Globe and Mail*:

(<https://www.theglobeandmail.com/canada/article-pacifist-murray-thomson-waged-an-unrelenting-campaign-for-peace/>).

The Steering Committee of CNWC will also take time over the coming months to think carefully about the implications of this loss for CNWC in the longer term.

2. The CNWC mandate

It may be useful to remind CPG members of the basic purpose and aims of CNWC:

“The United Nations General Assembly’s first resolution (January 24, 1946) called for the elimination of nuclear weapons from national armaments. That remains the formal objective of the international community, but it has not prevented a monumental nuclear arms race, the legacy of which is dangerously present in the almost 15,000 nuclear weapons that remain in national armaments, some 1,800 of which are on high alert and capable of being fired on 15 minutes’ notice. In 2017 the UN General Assembly adopted the Treaty on the Prohibition of Nuclear Weapons, which opened for signature on 20 September 2017. It marks a significant milestone in the pursuit of a world without nuclear weapons and Canada should sign it as a matter of urgency. This nuclear prohibition treaty reinforces the need for a comprehensive Nuclear Weapons Convention through which to codify the agreements, regulations, institutional arrangements, and verification measures essential to accomplishing the prohibition and irreversible elimination of nuclear weapons.

“Accordingly, we call on all member states of the United Nations – including Canada – to endorse, and begin negotiations for, a Nuclear Weapons Convention.”

In pursuit of that broad objective, CNWC is engaged on essentially five fronts:

- a) we reach out to Order of Canada recipients to endorse the call for a NWC, keep those who endorse the call informed of our activities, and invite participation by them - especially in signing on to our communications with Government;
- b) we engage with government, through letters, briefings, and meetings, pressing not simply for them to endorse a NWC in principle, but encouraging direct action on specific elements of the global nuclear disarmament agenda;
- c) hold nuclear disarmament forums and information sessions for Parliamentarians, convinced that without more literate legislators re nuclear issues, Governmental action and progress will be impeded;
- d) present an annual award designed to celebrate and encourage civic action in support of disarmament; and
- e) from time-to-time co-sponsor conferences and workshops with like-minded groups on agreed disarmament agenda items.

3. Letters to Government

Over the past 12 months we have written three formal policy letters to the government of Canada:

i. October 25, 2018 to Minister Chrystia Freeland from the CNWC Steering Committee:

“We write to strongly urge you and your Government to publicly and persistently object to the Trump Administration’s plan to withdraw from the US-Russian Intermediate-range Nuclear Forces (INF) Treaty and to call for maintaining and revitalizing the international nuclear arms control, nonproliferation, and disarmament regime. “

See **Appendix 1.**

ii. November 9, 2018 to Prime Minister Justin Trudeau from the Chairs of CNWC and CNANW highlighting the growing crisis of failure in international nuclear arms control and disarmament efforts (informed by the October 2018 NGO conference in Ottawa):

“The Canadian Network to Abolish Nuclear Weapons and Canadians for a Nuclear Weapons Convention write in the face of a deepening global nuclear crisis to urge you and your Government to make crisis de-escalation and persistent and intensified disarmament diplomacy a national priority.

“The following draws your attention to four elements of this escalating nuclear threat and identifies ways in which Canada can help move the international community, including our allies in NATO, to a more effective pursuit of the collective goal of a world without nuclear weapons. We fear, along with the International Pugwash movement, that without urgent action, we will witness the “disintegration of the current arms control regime.” And we join Pugwash in warning that “decades of effort to build an architecture of restraint are unravelling because key lessons from the early Cold War years seem to have been forgotten.”

The letter inadvertently went out on CNWC letterhead, but the dual sponsorship of the letter was clearly stated (**Appendix 2**).

iii. January 24, 2019 to Prime Minister Justin Trudeau on the importance of preserving the INF and New START Treaties, signed by 60 Canadians in the Order of Canada:

“Canada’s call for the preservation of the INF Treaty should also include a clear call on the United States and Russia to extend the New START Treaty beyond its February 2021 expiry and to challenge them to begin work on successor agreements to provide for further reductions in deployed and stockpiled nuclear weapons. Indeed, there is a pressing need to revitalize the entire international nuclear arms control, non-proliferation and disarmament regime and we encourage you and your government to become prominent champions of such revitalization.”

See **Appendix 3**.

Each of the letters was widely circulated and announced to the media.

4. Conference

October 1, 2018, “Canadian Leadership on Nuclear Disarmament,” jointly sponsored by CNWC and CNANW

The keynote address by Joe Cirincione, President of the Ploughshares Fund of Washington, D.C. For the full rapporteur’s report see **Appendix 4**.

5. Meetings

i. Breakfast forum for Parliamentarians with Joe Cirincione

As part of the ongoing effort to reach Members of Parliament with information and encouragement in support of nuclear disarmament, we arranged in cooperation with Parliamentarians for Nuclear Non-proliferation and Disarmament (PNND) for a breakfast meeting with Mr. Cirincione. It was well attended (as such events go), with 10

Members of Parliament (all parties being represented) as well as staff members for other MPs.

Mr. Cirincione's presentation covered some of the same themes of his talks to the NGO conference:

- The world faces a global nuclear crisis that threatens to undo years of progress on non-proliferation and disarmament and risks nuclear escalation and confrontation;
- NATO's nuclear posture, with Canada's complicity, is an affront to disarmament and contributes to this crisis;
- The failure of Canada and other NATO states to support the Treaty on the Prevention of Nuclear Weapons (TPNW) adds to the crisis;
- Canada has previously played a positive role in advancing peace and disarmament internationally and the feminist foreign policy and pursuit of a seat at the UN Security Council create new opportunities;
- Better relations with Russia are critical for progress on both non-proliferation and disarmament;
- Civil society is critical for both maintaining pressure on governments and as a source of guidance and knowledge;

He emphasized the urgency of the current international moment. The new nuclear arms race, involving "modernization" in all arsenals and new nuclear use doctrines, risk a nuclear confrontation as well as long-term damage to disarmament efforts. At the same time, shifting international power structures create new opportunities for leadership toward a world without nuclear weapons.

Following the presentation, Mr. Cirincione spoke at a press conference in the Centre Block press room.

ii. Cindy Termorshuizen, Director General, International Security Bureau, GAC (Feb 13/19):

This meeting was a follow up to:

- a) the CNWC proposal for a civil society/Global Affairs Canada (GAC) dialogue, through a series of consultations on diplomatic bridge-building between non-nuclear weapon states (NNWS) and nuclear weapon states (NWS), in support of a reinvigorated nuclear disarmament regime, "A New Disarmament 'Mindset'" (see **Appendix 5**), and
- b) three recent civil society letters to the Prime Minister and Foreign Minister on the INF Treaty, NATO's nuclear policies, and the urgent need for renewal of the global disarmament and non-proliferation regime.

iii. Cindy Termorshuizen, Director General, International Security Bureau, GAC (June 4, 2019):

This meeting was part of the continuing dialogue with Global Affairs Canada, with a “non-paper” by Douglas Roche (**Appendix 6**) offered as background for the discussion. We also heard from Ms. Termorshuizen on her recent consultations with European partners.

iv. The Hon. Erin O’Toole, M.P., Foreign Affairs Critic, the Conservative Party of Canada (June 4, 2019).

This meeting was an opportunity to engage with a senior member of the Conservative Party. A CNWC memo (**Appendix 7**) provided background for the discussion.

6. Op-Eds

“How to build an architecture of peace, when destruction can rain down in mere minutes” *The Globe and Mail*, 7 July 2019. Douglas Roche and Ernie Regehr

“Canada must be clear-eyed about nuclear disarmament,” *The Globe and Mail*, 20 January 2019. Douglas Roche and Ernie Regehr

7. Toronto educational event with Ramesh Thakur

We were pleased to provide a special briefing to Toronto area CNWC endorsers (March 25, 2019), conducted by the internationally respected disarmament analyst, Prof. Ramesh Thakur: “Nuclear Arms Control/Disarmament in the Trump/Putin era”.

The event was jointly sponsored by CNWC and the Bill Graham Centre on Contemporary International History at the University of Toronto and held at The Library of the Munk School of Global Affairs. A paper by Prof. Thakur, “A Bifurcated Global Nuclear Order” (**Appendix 8**), was distributed in advance of the meeting.

8. CNWC Award

Since 2011 CNWC has presented the annual achievement award for exemplary action in support of nuclear disarmament. The 2018 recipient was Debbie Grisdale of Ottawa, and the

2019 recipients are physicians Mary-Wynne Ashford and Jonathan Down of Victoria, BC. See **Appendix 9** for both announcements.

9. Thank you

CNWC is of course supported by a wide variety of organizations and people, some of which deserve special mention and thanks:

- The Canadian Pugwash Group is the sponsoring organization for the CNWC project and, in addition to the important public affirmation that comes with that sponsorship, the CPG also brings critically important financial and administrative support, the latter coming especially via the CPG Treasurers who look after the financial administration (formerly Adele Buckley and now Peter Venton).
- We are grateful to The Simons Foundation for having awarded CNWC a three-year grant, which is the key financial support that makes ongoing operation possible.
- The more than 1,000 recipients of the Order of Canada who have endorsed the CNWC call lend these efforts a heightened sense of gravitas and credibility – and Prof. John Polanyi, one of the originators of the project, continues to be an essential supporter.
- We're grateful to Sarah Bowles for her ongoing administrative assistance and website maintenance.
- And, of course, the CNWC Steering Committee does the basic work – three of whom can justifiably be singled out for their singular contributions:
 - Bev Delong's meticulous organizing and faithful summarizing of our meetings is key to keeping us organized;
 - David Silcox does extraordinary work in recruiting a broad range of prominent Canadians to endorse our work (he and Murray have been the chief recruiters of new signatories); and
 - Adele Buckley has for years done yeoman service in attending to CNWC finances (with that file now having been passed to Peter Venton, Adele continues to serve on the Steering Committee).

10. Steering Committee Members 2018-2019

Murray Thomson
 Douglas Roche
 David Silcox
 Jennifer Allen Simons
 Ernie Regehr
 Adele Buckley
 Beverly Delong
 Cesar Jaramillo

Submitted on Behalf of the CNWC Steering Committee
 September 2, 2019
 Ernie Regehr, Chair, CNWC Steering Committee

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October 25, 2018

The Hon. Chrystia Freeland, Minister of Foreign Affairs
Global Affairs Canada
125 Sussex Drive
Ottawa, Ontario, Canada
K1A 0G2

Dear Minister Freeland,

We write to strongly urge you and your Government to publicly and persistently object to the Trump Administration's plan to withdraw from the US-Russian Intermediate-range Nuclear Forces (INF) Treaty and to call for maintaining and revitalizing the international nuclear arms control, nonproliferation, and disarmament regime.

We are well aware of US charges that Russia is in violation of the Treaty, and we also note, as has a recent US Congressional Research Report, that Russia has identified three current and planned US military programs that it charges are or will be in violation of the Treaty. The way to resolve these serious charges is not by abandoning hard won, and in the case of the INF, historically important Treaties. We thus urge the Government of Canada to join with its European allies to insist that the United States and Russia resolve their differences at the negotiating table and by honoring their disarmament obligations under the Nuclear Non-Proliferation Treaty. As the German Foreign Minister, Heiko Maas, has put it, it is our collective responsibility to leave "no stone unturned in the effort to bring Washington and Moscow back to the table..."

The threatened abrogation of the INF Treaty pushes the world toward a dangerous tipping point. All states with nuclear weapons are already embarked on expensive and destabilizing "modernization" programs. We fear that if the Trump Administration proceeds with abandoning this Treaty without major push back from allies like Canada, it will also abandon the New START Treaty (which will expire in February 2021 if the US and Russia do not extend it). That would end all formal restraints on nuclear weapons programs and would lead to an unthinkable perilous acceleration of the nuclear arms races that are already underway.

We implore you and the Government of Canada to act with urgency and persistence and to stand for a return to the careful, painstaking, and unrelenting diplomacy of nuclear arms control and disarmament.

Sincerely,

Murray Thomson, OC

David Silcox, CM

Douglas Roche, OC

Ernie Regehr, OC

Chair, CNWC Steering Committee

Cesar Jaramillo

Bev Delong

Adele Buckley

Cc: The Rt. Hon. Justin Trudeau, Prime Minister

The Hon. Andrew Scheer, Leader of the Opposition and Leader of the Conservative Party

Jagmeet Singh, Leader of the New Democratic Party

Elizabeth May, Leader of the Green Party

Rhéal Fortin, Interim Leader of the Bloc Québécois

The Hon. Peter Harder, the Government's representative in the Senate

Members of the House of Commons Standing Committee on Foreign Affairs and International Development

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L'Honorable Chrystia Freeland
Département des Affaires Globales
125 Sussex Drive
Ottawa, Ontario, Canada
K1A 0G2

25 octobre 2018

Chère madame la ministre,

Nous vous adressons respectueusement cette lettre qui a pour objet de vous inciter fortement, ainsi que le gouvernement du Canada, à vous objecter publiquement de façon persistante au récent plan de l'Administration Trump de se retirer du Traité USA-Russie concernant les forces nucléaires de portée intermédiaire (INF) et à lancer un appel à maintenir et à revitaliser le contrôle international sur les armes nucléaires et leur prolifération en vue d'un désarmement.

Si nous sommes parfaitement au courant des accusations de Washington envers les violations russes du Traité, nous observons, comme l'a fait un rapport récent de recherches du Congrès américain, que la Russie a de son côté identifié trois programmes militaires américains en cours ou en planification en violation du Traité. La façon de résoudre de telles accusations n'est certes pas en abandonnant des traités d'importance historique, gagnés de haute lutte, tels que l'INF. Nous prions donc le Gouvernement du Canada de se joindre à ses alliés européens pour insister que les États-Unis et la Russie aplanissent leurs différents à une table de négociation en respectant les clauses de désarmement du Traité de non-prolifération. Selon les termes employés par le Ministre des Affaires étrangères de l'Allemagne Heiko Maas, il y va de notre responsabilité collective de ne ménager aucun effort afin de ramener Washington et Moscou à cette table.

La menace d'abrogation du Traité INF repousse le monde vers un danger de basculer. Tous les pays possédant des armes nucléaires étant déjà embarqués dans des programmes coûteux et déstabilisants de "modernisation", nous craignons que si l'Administration Trump abandonne ce Traité sans une forte réaction négative de la part d'alliés tel que le Canada, il pourrait aussi abandonner le Traité New Start (dont l'expiration sera en février 2021, à moins que les États-Unis et la Russie le prolongent). Cette éventualité mettrait un

terme à toute restriction formelle sur les programmes d'armes nucléaires et enclencherait une impensable accélération périlleuse des courses à l'arme nucléaire déjà en cours.

Nous vous implorons, ainsi que le gouvernement du Canada, d'agir de toute urgence et avec persistance pour revenir à la pénible mais prudente et incessante tâche diplomatique en vue du contrôle des armes nucléaires et de leur désarmement.

Sincèrement,

Murray Thomson, OC

David Silcox, CM

Douglas Roche, OC

Ernie Regehr, OC

Président du comité directeur du CNWC

Cesar Jaramillo

Bev Delong

Adele Buckley

Cc: Le Très Honorable Justin Trudeau, Premier ministre

L'Honorable Andrew Scheer, chef de l'Opposition et du Parti Conservateur

Jagmeet Singh, chef du Nouveau Parti Démocratique

Elizabeth May, cheffe du Parti Vert

L'Honorable Peter Harder, représentant le gouvernement au Sénat

Membres du Comité Permanent de la Chambre des Communes pour les Affaires étrangères et le Développement international

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Canadian Network to Abolish Nuclear Weapons

November 9, 2018

The Right Honourable Justin Trudeau
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister,

The Canadian Network to Abolish Nuclear Weapons and Canadians for a Nuclear Weapons Convention write in the face of a deepening global nuclear crisis to urge you and your Government to make crisis de-escalation and persistent and intensified disarmament diplomacy a national priority.

The following draws your attention to four elements of this escalating nuclear threat and identifies ways in which Canada can help move the international community, including our allies in NATO, to a more effective pursuit of the collective goal of a world without nuclear weapons. We fear, along with the International Pugwash movement, that without urgent action, we will witness the “disintegration of the current arms control regime.” And we join Pugwash in warning that “decades of effort to build an architecture of restraint are unravelling because key lessons from the early Cold War years seem to have been forgotten.”

Nuclear dangers

First among the troubling elements of the deepening nuclear threat is the radical deterioration of East/West relations, notably the heightened tensions between Russia and NATO. The refusal to engage in sustained diplomacy and strategic dialogue, in a serious effort to set a durable foundation on which to de-escalate tensions and build mutual security, points to a future of grave uncertainty and repeated bouts of political hostility and military sabre rattling that threaten to spiral out of control.

A second and related element of the current nuclear crisis is the dysfunctional state of bilateral and multilateral arms control/disarmament institutions and practices. One manifestation of this dysfunction is the Geneva-based Conference on Disarmament’s decades-long obstruction, due in part to antiquated procedural rules, of efforts by Canada and like-minded states to achieve a treaty to control fissile materials for weapons purposes. At the same time, the fully approved Comprehensive Nuclear Test Ban Treaty continues to languish under an unusually daunting entry-into-force provision. Of particular worry is the current absence of any bilateral US/Russia or multilateral strategic arms control and disarmament talks, even as Washington prepares to abrogate the Intermediate Nuclear Forces Treaty and questions the value of the 2011 New START Treaty. The growing fragility of the Nuclear Non-Proliferation Treaty (NPT) is

indisputable, and without action by the nuclear weapon state parties to show good faith in addressing their Article VI disarmament obligations, the 2020 Review Conference is destined to fail and non-nuclear weapon states will increasingly question the value and wisdom of their unrequited compliance with the non-proliferation provisions of this essential Treaty.

Third, the current nuclear weapons “modernization” programs will have obvious and long-term deleterious implications for disarmament and, if not curbed, will result in chronic destabilization and escalating of risks of nuclear use. Re-armament programs are especially intense in the United States and Russia, but, in fact, all states with nuclear weapons are engaged in either “improving” or expanding their arsenals. Among those programs are the development of smaller and more accurate nuclear weapons which are welcomed by some as more “useable” – potentially leading political and military leaders alike to conclude that a limited nuclear strike could achieve specific military objectives without incurring nuclear retaliation. But escalation to nuclear use will not be confined to a single attack. This dangerous move toward nuclear use options is exacerbated by moves to deploy conventional and nuclear warheads on the same weapons systems, obscuring the conventional/nuclear divide and thus dramatically increasing the danger of nuclear use in a crisis.

Fourth, the current fourfold nuclear crisis is given special immediacy by the continuing stand-off on the Korean Peninsula and by Washington’s determined effort to destroy the 2015 nuclear deal with Iran (the Joint Comprehensive Plan of Action – JCPOA). The crisis of North Korea shows some tantalizing hints of progress, nevertheless it remains in the custody of unstable political leadership in both Pyongyang and Washington, and to that uncertainty is added Washington’s sustained attempt to sabotage the JCPOA’s effective verification of Iran’s commitment not to pursue a nuclear weapon.

A call to Canadian action

It is, of course, true that Canada alone cannot single-handedly alleviate and reverse these dangerous threats, but even on its own, Canada can be squarely on the side of restraint, diplomacy, negotiations, and a reset of global security dynamics away from military competition and in favour of mutuality and interdependence.

That said, as a quintessential middle power, Canada will find its most constructive impact in common with other states. Successive Canadian Governments have argued that membership in NATO gives Canada a seat at an important table, and now is the time to use the place at that table to build coalitions of support for a more stable, less polarized, less militarized and ultimately denuclearized world. NATO is directly engaged and implicated in the current nuclear crises, and it is incumbent on Canada to find, or more importantly, to create opportunities for collective action for disarmament within the Alliance.

At a civil society conference, held in Ottawa on October 1, 2018 under the sponsorship of Canadians for a Nuclear Weapons Convention (CNWC) and the Canadian Network for the Abolition of Nuclear Weapons (CNANW), participants identified a number of key measures for collective action designed to ease the existing nuclear crises and move the world toward an

international political environment that will be more conducive to disarmament – towards actually advancing the daunting process of dismantling the nuclear sword of Damocles.

In this moment of crisis, Canadians need a national Government that is acutely aware of the nuclear dangers that confront us, and one that acts with courage and foresight to advance practical measures to rein in nuclear arsenals and revitalize the stabilizing nuclear non-proliferation and disarmament regime. We have been deeply disappointed that, beyond actions in support of a treaty to control fissile materials for weapons purposes, an important but hardly sufficient response to the totality of the nuclear threat, your Government has been largely quiescent on the nuclear disarmament file. It is time for Canada to rise above the present inertia and take on the mantle of a determined middle power seized of the urgency of the moment and willing to exert leadership in all the forums in which the nuclear question figures prominently (notably the United Nations First Committee and General Assembly, the NPT Review Conferences, and the North Atlantic Council).

The Prime Minister of Canada should regularly speak publicly and forcefully to help Canadians understand the full extent and severity of the nuclear peril and to highlight the urgent imperative of nuclear disarmament. The obvious truth that there is much in the current international security environment that is inimical to nuclear arms control and disarmament cannot be an excuse for inaction or, worse, for deriding the efforts of others (for example, the negotiation and approval of the new Treaty on the Prohibition of Nuclear Weapons). Today's challenging international security environment must be taken as an urgent call to action and be the occasion to embrace a recommitment to multilateral disarmament diplomacy and to invest the political capital and budgetary resources required to support such a commitment.

We further urge your Government to give substance to such a recommitment by pursuing the following proposals and initiatives and actively seeking the support and collaboration of like-minded states within and beyond NATO:

1. It is urgent that NATO and Russia undertake a serious security and strategic stability dialogue, and such an initiative needs champions within NATO. We are heartened by the OSCE's structured dialogue, launched in 2016, which is currently focused on important East/West military security issues and the avoidance of escalation and disastrous miscalculation, but without a much broader security dialogue that also explores the re-invigoration of cooperative security mechanisms, military tensions will continue to fuel increased military spending, provocative exercises, and perpetual tensions. We urge Canada to become a consistent, persistent voice for East/West dialogue that stays the course, even in the face of egregious violations of international norms and laws.
2. We also call on you and your Government to publicly acknowledge that the Nuclear Non-Proliferation Treaty (NPT) is under threat, and that to save the Treaty the nuclear weapon states will have to take explicit measures to demonstrate their acknowledgement of, and commitment to, the disarmament that is required of them under the Treaty.

Disarmament action that Canada should prominently support includes:

- a) a call to preserve the Intermediate-Range Nuclear Forces Treaty, to forthrightly address suspected violations, and to establish the longer-term goal of multilateralizing the Treaty, a stance consistent with Canada's well-established work in support of ballistic missile controls and preventing the spread of ballistic missile technologies;
- b) calls for the New START Treaty to be extended beyond February 2021 and for Russia and the United States to immediately begin negotiations toward further reductions to be formalized in a successor strategic arms control treaty; and
- c) urging the hold-out states to ratify the Comprehensive Test Ban Treaty, and insisting that work towards a fissile materials control treaty be taken out of the Conference on Disarmament and pursued through multilateral negotiations authorized by the UN General Assembly – treaties to ban nuclear testing and to ban the production of fissile materials for weapons purposes were commitments made in 1995 as conditions of the indefinite extension of the NPT.

3. In response to nuclear powers “modernizing” their nuclear arsenals, Canada should work within NATO to support initiatives that would permanently reduce and ultimately eliminate the role of nuclear weapons in the Alliance's defence policy, by:

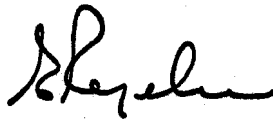
- a) adopting, in its collective declarations, realistic language about the dangers of nuclear weapons and insisting that nuclear disarmament, not nuclear deterrence, must be a key part of the “guarantee” and foundation for global security;
- b) ending NATO's nuclear sharing policy by which nuclear weapons are deployed in the territories of non-nuclear weapons states in the Alliance, and thus urging the repatriation of all US nuclear weapons (the B61 bombs) now in Europe back to the United States (and in the process finally moving NATO states into compliance with Articles I and II of the NPT); and
- c) urging the Alliance to declare that it will never be the first to use nuclear weapons in a military conflict.

4. We also call on Canada to emphasize the critical importance of preserving the Joint Comprehensive Plan of Action on Iran and to call for a similar suite of verifiable de-nuclearization commitments to be established for North Korea and the entire Korean peninsula. The successful verifiable and irreversible rejection of nuclear weapons by both states is essential for the international community to have confidence in the non-proliferation regime embodied in the NPT and the safeguard system of the International Atomic Energy Agency.

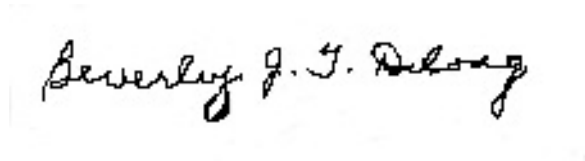
Prime Minister, we are keenly aware of the daunting array of challenges that Canada faces. Climate change, environmental responsibility, and the urgent need to wean our society from its dependence on fossil fuels are themselves an overwhelming agenda, yet we know that they only head a long list of issues that require the diligent attention of you and your Government. Nevertheless, we implore you to assign nuclear disarmament a much higher priority among the issues and challenges you address. The nuclear threat is real and is made all the more urgent by the failure of responsible leadership in today's Washington and Moscow. The international nuclear non-proliferation and disarmament regime needs more of Canada, working alongside other like-minded states bent on helping the world retreat from the nuclear precipice.

The above proposals set out a constructive, comprehensive agenda for reinvigorated Canadian nuclear disarmament diplomacy. We commend them to you and look forward to receiving your response to each of the points made and policies proposed, and we will be pleased to share that response with our supporters and the 19 civil society organizations represented in our networks."

Sincerely,



Ernie Regehr
Chair, CNWC Steering Committee



Bev Delong
Chair, CNANW Executive Committee

Cc: The Hon. Chrystia Freeland, Minister of Foreign Affairs
The Hon. Andrew Scheer, Leader of the Opposition and Leader of the Conservative Party
Jagmeet Singh, Leader of the New Democratic Party
Elizabeth May, Leader of the Green Party
Rhéal Fortin, Interim Leader of the Bloc Québécois

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Russie, voire multilatéraux, sur le contrôle stratégique des armes et le désarmement, alors même que Washington se prépare à abroger le TRAITÉ DE LIMITATION DES ARMES NUCLÉAIRES À MOYENNE PORTÉE et remet en question l'utilité du nouveau TRAITÉ START de 2011. La fragilité croissante du TRAITÉ DE NON-PROLIFÉRATION NUCLÉAIRE (TNP) est indiscutable et, sans une action de la part des puissances nucléarisées montrant leur volonté de mettre à exécution, de bonne foi, leurs obligations de désarmement prévues à l'article VI, la Conférence d'examen de 2020 se dirige vers un échec et les États non nucléarisés se demanderont de plus en plus s'il est vraiment utile et sage pour eux de se conformer aux dispositions de non-prolifération de ce traité capital.

Troisièmement, les programmes actuels de « modernisation » des armes nucléaires auront des effets évidents – et, à long terme, nuisibles – sur le désarmement et, s'ils ne sont pas réprimés, entraîneront une déstabilisation et une escalade chroniques des risques de recours au nucléaire. Si les programmes de réarmement sont particulièrement en vogue aux États-Unis et en Russie, il n'empêche que, en fait, tous les pays nucléarisés sont occupés à « améliorer » ou à enrichir leurs arsenaux. Ces programmes visent notamment le développement d'armes nucléaires plus petits et plus précis, jugés favorablement par certains comme étant plus « utilisables », ce qui risque de mener les dirigeants autant politiques que militaires à conclure qu'une frappe nucléaire limitée peut permettre d'atteindre certains objectifs militaires précis sans déclencher des représailles nucléaires. Mais le passage au nucléaire ne se limitera pas à une seule attaque. Cette tendance dangereuse vers des options nucléaires est exacerbée par la tentation de déployer des ogives conventionnelles et nucléaires dans les mêmes armements, ce qui vient brouiller la distinction entre le conventionnel et le nucléaire et augmente terriblement le danger du recours au nucléaire en situation de crise.

Quatrièmement, la crise nucléaire quadruple actuelle est devenue particulièrement pressante avec la confrontation continue sur la péninsule coréenne et avec la détermination de Washington d'anéantir le compromis nucléaire de 2015 avec l'Iran (appelé l'ACCORD DE VIENNE, ou PLAN D'ACTION GLOBAL COMMUN, SUR LE NUCLÉAIRE IRANIEN). Quoique la crise nord-coréenne montre certains signes de progrès, elle demeure sous la responsabilité de directions politiques instables aussi bien à Pyongyang qu'à Washington, et à cette incertitude s'ajoute la tentative soutenue de Washington de saboter la vérification, que prévoit l'ACCORD DE VIENNE, des engagements iraniens à cesser la poursuite de son programme d'armes nucléaires.

Appel à l'intervention canadienne

Naturellement, le Canada ne peut seul alléger et inverser ces graves dangers, mais il peut, même seul, se faire le promoteur de la retenue, de la diplomatie, de la négociation et de la réorientation des dynamiques de la sécurité mondiale vers la réciprocité et l'interdépendance, à l'opposé de la concurrence militaire.

Cela dit, en tant que puissance typiquement moyenne, l'action du Canada sera plus efficace si elle est menée de concert avec d'autres pays. Puisque les gouvernements canadiens successifs ont soutenu que l'adhésion du Canada à l'OTAN lui donnait un siège à une table importante de concertation, le temps est venu pour lui de profiter de sa place à cette table pour construire des coalitions en vue de la réalisation d'un monde plus stable, moins polarisé, moins militarisé et, au final, dénucléarisé. L'OTAN est directement engagée et impliquée dans les crises nucléaires

actuelles, et il incombe au Canada de trouver, ou encore mieux, de créer des occasions d'action collective, au sein de l'Alliance, pour le désarmement.

Lors d'une conférence issue de la société civile, tenue le 1^{er} octobre 2018 à Ottawa sous l'égide du Rassemblement canadien pour une convention sur les armes nucléaires (RCCAN) et le Réseau canadien pour l'abolition des armes nucléaires (RCAAN), les participants ont dégagé un certain nombre de mesures-clés pour une action collective visant à désamorcer les crises nucléaires actuelles et à orienter le monde entier vers une conjoncture politique internationale plus favorable au désarmement, c'est-à-dire à la levée progressive de cette terrible épée nucléaire de Damoclès.

En cette époque de crise, la population canadienne a besoin d'un gouvernement national très sensible aux dangers nucléaires qui la menace, qui agit avec courage et prévoyance en vue de promouvoir des mesures pratiques aptes à restreindre les arsenaux nucléaires et à revitaliser le régime stabilisant de la non-prolifération et du désarmement nucléaires. Nous avons été grandement déçus de constater que, à part un soutien à un traité visant le contrôle de la matière fissile à fins d'armements – mesure importante mais nettement insuffisante pour arrêter l'ensemble de la menace nucléaire –, votre gouvernement a été largement inactif dans le dossier du désarmement nucléaire. Il est temps pour le Canada de se secouer de son inertie et d'assumer les responsabilités d'une puissance moyenne pleine de détermination, consciente de l'urgence et prête à exercer un rôle de premier plan dans tous les forums consacrés à la question nucléaire (notamment la Première Commission et l'Assemblée générale de l'ONU, les conférences d'examen du TNP et le Conseil de l'Atlantique Nord).

Le premier ministre du Canada devrait prendre la parole régulièrement pour s'attaquer au problème, afin d'aider la population à mieux comprendre l'étendue et la gravité du danger nucléaire et de faire valoir l'urgente nécessité du désarmement nucléaire. Il est bien évident que beaucoup de choses, dans la conjoncture sécuritaire internationale, sont défavorables au contrôle des armes et au désarmement nucléaires, mais cela ne doit pas servir de prétexte à l'inaction ou, pire, à la dépréciation des efforts des autres (par exemple, pour la négociation et l'adoption du nouveau TRAITÉ SUR L'INTERDICTION DES ARMES NUCLÉAIRES). La conjoncture sécuritaire internationale d'aujourd'hui doit être vue par le Canada comme un appel urgent à l'action et comme l'occasion de renouveler son engagement envers la diplomatie multilatérale en matière de désarmement et d'affecter les ressources politiques et budgétaires nécessaires à cette fin.

Nous pressons aussi votre gouvernement à donner vie à cet engagement renouvelé en donnant suite aux propositions et initiatives qui suivent, tout en recherchant activement le soutien et la collaboration de pays homodoxes, au sein comme en dehors des rangs de l'OTAN :

1. Il est urgent que l'OTAN et la Russie entament un dialogue sérieux en matière de sécurité et de stabilité stratégique, initiative qui a besoin de fervents promoteurs au sein de l'OTAN. Nous trouvons encourageant le dialogue structuré de l'Organisation pour la sécurité et la coopération en Europe (OSCE), lancé en 2016, qui est actuellement concentré sur les enjeux importants en matière de sécurité militaire Est-Ouest tout en cherchant à éviter les escalades et les erreurs désastreuses de calcul; cependant, sans un dialogue beaucoup plus large qui explore, en plus, la redynamisation des mécanismes coopératifs de sécurité, les tensions militaires vont continuer de favoriser l'accroissement des dépenses militaires, les actes de provocation et les tensions perpétuelles. Nous souhaitons que le Canada devienne une voix constante, persistante dans un

dialogue Est-Ouest qui tienne le coup, même devant les violations monumentales des normes et lois internationales.

2. Nous vous exhortons aussi, ainsi que votre gouvernement, à reconnaître publiquement le fait que le TRAITÉ DE NON-PROLIFÉRATION NUCLÉAIRE (TNP) est menacé et que, pour le sauver, les États nucléarisés devront prendre des mesures expresses aptes à démontrer qu'ils reconnaissent les obligations de désarmement que leur confère le traité et qu'ils s'engagent à respecter ces obligations.

Voici certaines mesures de désarmement que le Canada devrait soutenir avec vigueur :

- a) un appel au maintien du TRAITÉ DE LIMITATION DES ARMES NUCLÉAIRES À MOYENNE PORTÉE, à l'examen sans détour des violations apparentes, ainsi qu'à l'établissement d'un plan à long terme de multilatéralisation du traité, projet qui cadre bien d'ailleurs avec l'activité bien connue du Canada pour le contrôle des missiles balistiques et la prévention de la propagation des technologies balistiques;
- b) un appel pour la prolongation du nouveau TRAITÉ START au-delà de février 2021 et pour que la Russie et les États-Unis entament immédiatement des négociations en vue de réductions additionnelles à inscrire dans une prochaine mouture du traité;
- c) des pressions pour que les États rétifs ratifient le TRAITÉ D'INTERDICTION COMPLÈTE DES ESSAIS NUCLÉAIRES et pour que les travaux relatifs à un traité sur le contrôle de la matière fissile soient retirés de la Conférence d'examen du TNP et deviennent plutôt l'objet de négociations multilatérales sous l'autorité de l'Assemblée générale de l'ONU (car les traités d'interdiction des essais nucléaires et de la production de matière fissile à fin d'armement ont fait l'objet d'engagements, en 1995, comme conditions à la prolongation indéfinie du TNP).

3. En réaction à la « modernisation » des arsenaux nucléaires par les puissances nucléarisées, le Canada se doit de travailler au sein de l'OTAN au soutien d'initiatives qui réduiraient de manière permanente et, en fin de compte, élimineraient la place qu'occupent les armes nucléaires dans la politique de défense de l'Alliance; il s'agit notamment pour l'OTAN :

- a) d'employer, dans ses déclarations communes, des propos réalistes relativement aux dangers des armes nucléaires et insister sur le fait que c'est le désarmement nucléaire, plutôt que la dissuasion nucléaire, qui est au cœur de la « garantie » et des fondements de la sécurité mondiale;
- b) de mettre fin à sa politique relative au partage nucléaire, laquelle permet de déployer des armes nucléaires dans les territoires de pays non nucléarisés au sein de l'Alliance, en passant par le rapatriement de toutes les armes nucléaires américaines (les bombes B61) qui se trouvent actuellement sur le sol européen (et du même coup emmenant les États membres de l'OTAN à se conformer aux articles I et II du TNP);
- c) de déclarer qu'elle ne sera jamais la première à recourir au nucléaire en cas de conflit militaire.

4. Nous demandons aussi au Canada d'insister sur l'importance cruciale de préserver l'ACCORD DE VIENNE (ou PLAN D'ACTION GLOBAL COMMUN) SUR LE NUCLÉAIRE IRANIEN et sur l'opportunité d'obtenir des engagements similaires, en matière de mesures vérifiables de dénucléarisation, pour la Corée du Nord et la péninsule coréenne tout entière. Le rejet vérifiable et irréversible des armes nucléaires par les deux Corées est essentiel pour que la communauté internationale puisse

avoir confiance dans le régime de non-prolifération inscrit dans le TNP et dans le système de garantie de l'Agence internationale de l'énergie atomique.

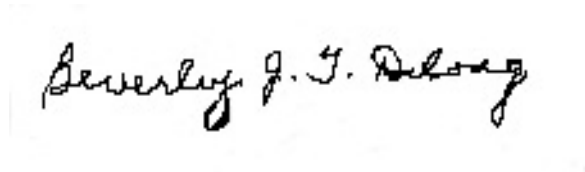
Monsieur le premier ministre, nous sommes très conscients des énormes défis auxquels le Canada est confronté. Rien que les changements climatiques, les responsabilités environnementales et le besoin urgent de sevrer notre société de sa dépendance aux combustibles fossiles suffisent déjà à surcharger l'agenda, et pourtant nous savons que ce ne sont là que quelques-uns des enjeux qui exigent votre attention et celle de votre gouvernement. Néanmoins, nous vous implorons d'attribuer au désarmement nucléaire une priorité beaucoup plus grande parmi tous ces autres enjeux et défis. La menace nucléaire est réelle et l'irresponsabilité qui règne aujourd'hui à Washington et à Moscou rend encore plus urgente la nécessité de l'enrayer. Le régime international de non-prolifération et de désarmement nucléaires a besoin de l'aide du Canada, travaillant de concert avec les autres pays qui, comme lui, sont résolus à libérer notre monde du péril nucléaire.

Les propositions que nous avons énoncées constituent un programme constructif et d'envergure pour une diplomatie canadienne revigorée en matière de désarmement nucléaire. Nous vous les recommandons et comptons bien recevoir bientôt vos réactions à chacun des points mis de l'avant. Nous serons heureux de partager vos réponses avec tous nos adhérents et les 19 organisations de la société civile représentées dans nos réseaux.

Veuillez agréer, Monsieur le premier ministre, l'expression de notre très haute considération.



Ernie Regehr
Président du Comité d'orientation du RCCAN



Bev Delong
Présidente du Comité exécutif du RCAAN

Cc: L'Honorable Chrystia Freeland
L'Honorable Andrew Scheer, chef de l'Opposition et du Parti Conservateur
Jagmeet Singh, chef du Nouveau Parti Démocratique
Elizabeth May, cheffe du Parti Vert
Rhéal Fortin, chef intérimaire du Bloc Québécois

www.nuclearweaponsconvention.ca

Canadians for a Nuclear Weapons Convention
Rassemblement canadien pour une convention sur les armes nucléaires
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January 24, 2019

The Right Honourable Justin Trudeau
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister,

We write to urge, in the strongest terms, you and your government to publicly and prominently call on all the parties to the Intermediate-Range Nuclear Forces (INF) Treaty to ensure that it is preserved. We urge you to call on Russia and the United States directly to take advantage of the Treaty's special verification commission, along with other diplomatic avenues, to address their current and serious compliance concerns, and to call on the international community more broadly to consider ways and means of bringing other states with intermediate-range nuclear weapons, such as China, into the Treaty.

Canada's call for the preservation of the INF Treaty should also include a clear call on the United States and Russia to extend the New START Treaty beyond its February 2021 expiry and to challenge them to begin work on successor agreements to provide for further reductions in deployed and stockpiled nuclear weapons. Indeed, there is a pressing need to revitalize the entire international nuclear arms control, non-proliferation and disarmament regime and we encourage you and your government to become prominent champions of such revitalization.

We appreciate that in 2018 both the G-7 and NATO summits, with Canada's participation, declared that the preservation of the INF Treaty is a key to Euro-Atlantic and international security, but we are disappointed that the Government of Canada has itself remained inexplicably silent in the face of the Trump Administration's threat to abandon the Treaty.

The importance of this Treaty cannot be in doubt. As you know, it bans the possession, production, and flight-testing of ground-launched missiles within the 500 to 5,500 kilometers range and bans launchers for such missiles. A broad range of international arms control experts and diplomats has expressed what can only be described as persistent alarm regarding the probable consequences if US President Donald Trump follows through on his threat, issued on October 20, 2018 following a rally in Nevada, to "terminate" the Treaty – consequences that would in all probability include the lapse of New START.

Without these treaties, the world would, for the first time since 1972, be without any formal constraints on nuclear arsenals, and would thus face a perilous future of renewed arms races and

the heightened danger that political and military confrontations could escalate to nuclear use and widespread planetary annihilation.

Mikhail Gorbachev and George P. Shultz (Secretary of State in the Reagan Administration) have further pointed out that without these treaties the world will also lose the “innovative system of verification, inspections, data exchange and mutual consultations to ensure that each side can confidently verify that the other is faithfully adhering to the treaty limits” that was established by the INF, New START and earlier nuclear reduction treaties.

Two giants of American arms control who now run the Nuclear Threat Initiative, Senator (Ret’d) Sam Nunn and Ernst J. Moniz, Secretary of Energy in the Obama Administration, have also warned of a “cascade of negative consequences” if the Treaty is abandoned – including the unfettered deployment by Russia of intermediate range missiles sparking a new arms race, serious division within NATO, and the undermining of efforts to rally the world to prevent the further spread of nuclear weapons and missiles.

The noted Russian arms control diplomat and analyst Alexei Arbatov, currently a scholar in residence at the Carnegie Moscow Center, has recently written that “the US withdrawal from the INF Treaty risks triggering a chain reaction that would result in the collapse of the US-Russia nuclear arms control architecture. Should the treaty meet its demise, the New START Treaty may join it in the dustbin of history, as may the Nuclear Non-Proliferation Treaty (NPT), and the Comprehensive Nuclear Test Ban Treaty (CTBT).”

Fears of the collapse of the arms control regime and of renewed arms races are real. President Trump has said that if the US leaves the Treaty it will commence building weapons within the prohibited range. Russia’s deputy foreign minister, Sergei Ryabkov, has already said that Russia must assume that if the US abandons the INF it will move to deploy intermediate range missiles in Europe.

The INF Treaty is not simply a European or US-Russia matter. We are all stakeholders, and our Government has a special responsibility to plead Canada’s interests, which include the pursuit of a world without nuclear weapons, with the parties to the Treaty and with the international community broadly. Silence is an abrogation of responsibility. We urge you, Prime Minister, to provide bold, public, and insistent leadership.

Sincerely,

John Polanyi, CC, Toronto, ON
Ernie Regehr, OC, Waterloo, ON
Douglas Roche, OC, Edmonton, AB
David Silcox, CM, Toronto, ON
Jennifer Allen Simons, CM, Vancouver, BC.
Murray Thomson, OC, Ottawa, ON
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 Douglas Ward, CM, Ottawa, ON
 Lois Wilson, CC, Toronto, ON

The signatories to this letter are among more than 1,000 Canadians honoured by the Order of Canada and seized with the urgency of nuclear disarmament, who have thus issued a “call on all member states of the United Nations – including Canada – to endorse, and begin negotiations for, a Nuclear Weapons Convention.” <http://nuclearweaponsconvention.ca/>

Cc: The Hon. Chrystia Freeland, Minister of Foreign Affairs
 The Hon. Andrew Scheer, Leader of the Opposition and Leader of the Conservative Party
 Jagmeet Singh, Leader of the New Democratic Party
 Elizabeth May, Leader of the Green Party
 Rhéal Fortin, Interim Leader of the Bloc Québécois

www.nuclearweaponsconvention.ca

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 Rassemblement canadien pour une convention sur les armes nucléaires
 A project of Canadian Pugwash Group 56 Douglas Drive, Toronto, ON M4W 2B3
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24 janvier 2019

Le très honorable Justin Trudeau
Premier ministre du Canada
80 Wellington Street
Ottawa, ON K1A 0A2

Monsieur le Premier Ministre,

Nous vous envoyons cette lettre pour vous exhorter, ainsi que votre gouvernement, à inciter – publiquement et fermement – toutes les parties au Traité de limitation des armes nucléaires à moyenne portée (traité INF) à faire en sorte qu’il soit maintenu. Nous vous exhortons à vous adresser directement à la Russie et aux États-Unis pour les engager à se prévaloir de la commission spéciale de vérification du traité, ainsi que des autres voies diplomatiques, en vue de régler leurs différends actuels en ce qui concerne l’observation du Traité et, plus largement, à engager la communauté internationale à se pencher sur les moyens possibles pour obtenir l’adhésion d’autres États munis d’armes nucléaires à moyenne portée, telle la Chine, au traité.

L’intervention du Canada en vue du maintien du traité INF devrait aussi inciter vivement les États-Unis et la Russie à prolonger le nouveau traité START au-delà de sa date d’expiration de février 2021 et à entamer l’élaboration de nouveaux accords visant la réduction accrue des armes nucléaires déployées et stockées. Il y a, en effet, un urgent besoin de revitaliser tout le régime international de contrôle, de non-prolifération et de suppression des armes nucléaires, et nous vous encourageons, ainsi que votre gouvernement, à vous faire d’éminents champions de cette revitalisation.

Nous sommes heureux qu’en 2018 les sommets tant du G-7 que de l’OTAN, avec la participation du Canada, ont déclaré que le maintien du traité INF était essentiel à la sécurité euro-atlantique et internationale, mais nous sommes déçus que, inexplicablement, le gouvernement du Canada a lui-même choisi de garder silence devant la menace de l’Administration Trump de se retirer du traité.

On ne peut douter de l’importance de ce traité. Comme vous le savez, il interdit la possession, la production et les essais en vol des missiles lancés du sol à une distance de 500 à 5 500 kilomètres et interdit les rampes de lancement à cette fin. Des experts et des diplomates de partout dans le monde, spécialistes du contrôle international des armes, n’ont cessé de sonner l’alarme sur ce qui arriverait probablement si le président Donald Trump mettait à exécution sa menace, proférée le 20 octobre 2018 à la suite d’un ralliement au Nevada, de mettre fin au traité, ce qui entraînerait sans doute également la dissolution du nouveau traité START.

Sans ces traités, le monde serait dépourvu, pour la première fois depuis 1972, de restrictions formelles sur les arsenaux nucléaires, s’exposant ainsi à la reprise périlleuse des courses aux armements et au

danger accru de confrontations politiques et militaires ouvrant la porte au recours au nucléaire et à la destruction à l'échelle planétaire.

De plus, Mikhaïl Gorbatchev et George P. Shultz (secrétaire d'État dans l'Administration Reagan) ont aussi fait remarquer que, sans ces traités, le monde entier serait aussi privé de ce système innovateur de vérification, d'inspections, d'échange de données et de consultations mutuelles qui vise à assurer que chacune des parties peut, en confiance, vérifier que l'autre adhère loyalement aux limites qui ont été établies par le traité INF, le nouveau traité START, de même que les traités antérieurs sur la réduction du nucléaire.

Deux géants du contrôle des armes aux États-Unis qui dirigent actuellement la Nuclear Threat Initiative, soit l'ancien sénateur Sam Nunn et le secrétaire à l'Énergie dans l'Administration Obama, Ernst J. Moniz, ont aussi prévenu que l'abandon du traité entraînerait une cascade de répercussions néfastes, y compris le libre déploiement par la Russie de missiles à moyenne portée, suscitant une nouvelle course aux armements, une division profonde au sein de l'OTAN et la mise en échec des efforts pour sensibiliser le monde entier à la nécessité d'empêcher la prolifération des armes et des missiles nucléaires.

Le célèbre diplomate et analyste russe en matière de contrôle des armements, Alexei Arbatov, actuellement chercheur en résidence au Carnegie Moscow Center, a écrit récemment ce qui suit : [TRADUCTION] « Le retrait des États-Unis du traité INF risque de déclencher une réaction en chaîne qui entraînerait l'effondrement de l'arrangement russo-américain sur le contrôle des armes nucléaires. Advenant la dissolution du traité INF, le nouveau traité START pourrait bien le rejoindre dans les poubelles de l'histoire, de même que le Traité de non-prolifération nucléaire (TNP) et le Traité d'interdiction complète des essais nucléaires (TICEN). »

La crainte de l'effondrement du régime de contrôle des armes et de la reprise des courses aux armements est bien fondée. Le président Trump a déclaré que, si les États-Unis se dissocient du traité, ils se mettront à fabriquer des armes à portée interdite. On sait que le sous-ministre russe aux Affaires étrangères, Sergueï Ryabkov, a pour sa part avancé que la Russie devait présumer que les États-Unis, s'étant dissociés du traité INF, se mettront à déployer des missiles à moyenne portée en Europe.

Le traité INF ne concerne pas seulement l'Europe ou les relations russo-américaines. Nous sommes tous parties prenantes, et notre gouvernement se doit spécialement de défendre les intérêts du Canada, ce qui inclut son aspiration à un monde débarrassé des armes nucléaires, auprès des parties au traité et de la communauté internationale en général. Le silence est une abdication de responsabilité. Nous vous engageons, Monsieur le Premier Ministre, à faire preuve d'un leadership audacieux, public et insistant. Veuillez agréer, Monsieur le Premier Ministre, nos sincères salutations.

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 Margaret MacMillan, OC, London, UK
 Clifford Garfield Mahood, OC, Toronto, ON
 Elizabeth May, OC, Sidney, BC
 Gordon McBean, OC, London, ON
 Don McKay, OC, St. John's, NL

Audrey McLaughlin, OC, Whitehorse, YT
 Marilou McPhedran, CM, Winnipeg, MB
 Ann Mortifee, CM, Cortes Island, BC
 Balfour Mount, OC, Montreal, QC
 Alex Neve, OC, Ottawa, ON
 Peter Newbery, CM, New Hazelton, BC
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 Landon Pearson, OC, Ottawa, ON
 Nancy Ruth, CM, Toronto, ON
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 Ian Smillie, CM, Ottawa, ON
 Gerard Snow, CM, Moncton, NB
 Setsuko Thurlow, CM, Toronto, ON
 James Walker, OC, Waterloo, ON
 Douglas Ward, CM, Ottawa, ON
 Lois Wilson, CC, Toronto, ON

Les signataires de cette lettre sont parmi plus d'un millier de lauréats de l'Ordre du Canada qui, sensibles à l'urgence du désarmement nucléaire, ont engagé « tous les États membres des Nations Unies, le Canada compris, à appuyer l'adoption d'une convention sur les armes nucléaires et à entamer les pourparlers nécessaires à cet effet ».

Cc: L'Honorable Chrystia Freeland
 L'Honorable Andrew Scheer, chef de l'Opposition et du Parti Conservateur
 Jagmeet Singh, chef du Nouveau Parti Démocratique
 Elizabeth May, cheffe du Parti Vert
 Rhéal Fortin, chef intérimaire du Bloc Québécois

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Canadian Leadership on Nuclear Disarmament

Workshop presented by
Canadian Network to Abolish Nuclear Weapons (CNANW)
and
Canadians for a Nuclear Weapons Convention (CNWC)

October 1st, 2018

Rapporteur's Report

Jessica West, Project Ploughshares

Overview

The workshop “Canadian Leadership for Nuclear Disarmament” jointly hosted by the Canadian Network to Abolish Nuclear Weapons (CNANW) and Canadians for a Nuclear Weapons Convention (CNWC) brought together civil society and academic experts with Canadian government representatives to dissect the current nuclear weapons context and identify opportunities for civil society engagement and Canadian government leadership on disarmament and non-proliferation.

Key points from the discussion emphasize the coalescence of crisis and opportunity:

- We face a global nuclear crisis that threatens to undo years of progress on non-proliferation and disarmament and risks nuclear escalation and confrontation;
- NATO’s nuclear posture is an affront to disarmament and contributes to this crisis;
- Current Government of Canada positions on NATO and the Treaty on the Prevention of Nuclear Weapons (TPNW) are complicit in this crisis;
- Canada has previously played a positive role in advancing peace and disarmament internationally;
- Canada’s emphasis on a feminist foreign policy and desire for greater international prominence including a seat at the UN Security Council provide an opportunity to encourage renewed leadership;
- There is a desire from both civil society and Parliamentarians for Canada to resume a leadership position on nuclear disarmament, not least within NATO;
- Better relations with Russia are critical for progress on both non-proliferation and disarmament;
- Practical options are available to initiate change in NATO’s nuclear posture and reduce tensions with Russia;
- Civil society is critical for both maintaining pressure on governments and as a source of guidance and knowledge;
- To raise the public profile of nuclear abolition, current civil society efforts must reach more broadly to engage new movements and issues with which we share common interests in peace, survival, and an alternative future.

The current moment is urgent. The new nuclear arms race, involving “modernization” in all arsenals and new nuclear use doctrines, risk a nuclear confrontation as well as long-term damage to disarmament efforts. At the same time, shifting international power structures create new opportunities for leadership toward a world without nuclear weapons.

Part I: A Nuclear Inflection Point

The keynote address by **Joe Cirincioni** – President of the Ploughshares Fund in the United States – titled “Nuclear Insecurity in the Age of Trump and Putin” outlined the current crisis that defines the contemporary strategic context in which nuclear weapons are situated.

The parameters of this crisis are threefold:

- Danger on the Korean peninsula
- Growing confrontation between the United States and Iran
- Renewed nuclear arms race among nuclear weapons states

While the security situation on the Korean peninsula has shifted toward unprecedented diplomacy and seems to be giving way to a new security dynamic, Cirincioni stressed that it is not clear if this progress will continue in the absence of robust political encouragement and support. In contrast, the relationship between Iran and the United States continues to deteriorate. The US Administration’s withdrawal from the Joint Comprehensive Plan of Action (JCPOA) to inspect Iranian nuclear facilities and prevent its pursuit of nuclear weapons includes sanctions on firms and allies who engage in legal business practices with the regime. Moreover, the demands being made of Iran are described as an unconditional surrender. Not only are diplomatic paths to peace being closed, but there is a strong potential for direct confrontation through mutual presence and competing interests on the ground in Syria, which could unintentionally escalate.

The ability to contain these two non-proliferation crises is compromised by a crisis of disarmament among nuclear weapons states. Nuclear capabilities and delivery systems are being modernized and military doctrines revised in such a way that their use is slipping from an unthinkable, strategic deterrent to a useable, tactical weapon of limited warfare. This is dangerous. Not only does it risk catastrophic escalation, but the basic compromise that facilitated non-proliferation – the promise of disarmament – faces a death knell. The steady path of nuclear reductions over the past three decades has halted and been replaced with *re-armament*. Cirincioni describes this as an *inflection point*: once it gets going, it will be very difficult to turn back.

This sentiment is echoed by Ambassador **Paul Meyer** from The Simons Foundation, who equated the contemporary arms race between the world’s nuclear superpowers to the strategic standoff of the 1970s and ‘80s. Emphasizing previous Canadian leadership under Prime Minister Pierre Trudeau, Meyer described his “strategy of suffocation,” which proposed to cut off the oxygen feeding nuclear armament by banning warhead testing, ending test flights of warhead delivery vehicles, prohibiting further fissile materials production, and cutting spending on nuclear weapons. The earlier Prime Minister Trudeau was willing to expend political capital to challenge dominant security dynamics in pursuit of peace through reasoned policy alternatives.

Calling on Canada to move from “inertia to initiative,” Meyer offered the following recommendations:

- Voice concern that a new nuclear arms race is emerging and that it brings unacceptable risks for the international community;

- Reject the excuse that arms control and disarmament cannot progress because we have a difficult international environment with which to contend;
- Call for a prompt return to a US-Russia strategic dialogue and preservation of existing arms control and disarmament agreements;
- Acknowledge that the NPT is under threat, including from wide-spread weapons modernization programs, and recognize that the multilateral disarmament foreseen by this treaty requires concrete expression;
- Pursue leadership on a Fissile Materials Cut-off Treaty (FMCT) by seeking to obtain UN General Assembly authorization for a multilateral negotiation of such a treaty;
- Resist efforts to extend earthly conflict into outer space by once again advocating the non-weaponisation of this domain;
- Embrace a recommitment to multilateral disarmament diplomacy and re-invest in the resources required to support this.

Discussion emphasized opportunities and constraints for non-US leadership on nuclear disarmament, particularly by allies within NATO. Noting current tensions within the Alliance and ebbing American leadership, there is a sensed opportunity for members to break with the Alliance on nuclear issues, particularly if encouraged to do so. Similarly, the current crisis in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) process presents an opportunity for other countries to step forward and lead on this issue. The success of the Nuclear Ban Treaty speaks to this opening. Canada's bid for a UN Security Council seat is noted as a chance to exert influence.

Part II: NATO'S "supreme guarantee"

Focused on the role of NATO in the elimination of nuclear weapons, the second panel sought to elucidate the constraints that it imposes on disarmament and its role in the current nuclear crisis while identifying opportunities for Canada to advance disarmament from within the Alliance. All speakers emphasized the critical need for re-engagement with Russia.

Ernie Regehr, with The Simons Foundation and the Centre for Peace Advancement, pointed out that NATO does not itself have nuclear weapons and that NATO's status as a nuclear weapons alliance is based on the willingness of individual Alliance members with nuclear weapons (or those with US nuclear weapons on their soil by virtue of nuclear sharing) to make their capabilities available for collective operations. In this context NATO's Strategic Concept communicates the circumstances under which use of nuclear weapons might be considered. The Brussels Summit Declaration issued after the meeting of the North Atlantic Council 11-12 July 2018 included a fulsome defence of nuclear weapons as the *"supreme guarantee of the security of allies."* Further, there is growing allusion to the potential for nuclear weapons use in a variety of situations including in response to conventional attack and in a pre-emptive first strike, which must be understood in the context of weapons modernization programs and entrenching nuclear sharing within Europe

The idea that nuclear weapons of unlimited destructive capacity could be the foundation of security is, quite simply, offensive, particularly as the Alliance also continues to claim that it seeks to create the conditions for a world without nuclear weapons.

Regehr offered the following recommendations to move once again toward détente with Russia as a means of reducing the role of nuclear weapons in national and alliance defence policies:

- Adopt realistic language to limit the role of nuclear weapons and highlight the commitment to a world without nuclear weapons, replacing language that characterizes weapons of massive destructive capacity as a supreme guarantee of security;
- Commit to no first use of nuclear weapons;
- Repatriate all B61 bombs to the US;
- Refrain from acquiring dual capable aircraft by non-nuclear weapons states;
- Pursue missile defence cooperation with Russia;
- Reinvest in NATO-Russia dialogue and diplomatic engagement

Peggy Mason, President of the Rideau Institute and former Ambassador for Disarmament, presented the recommendations of the all-party, unanimous report submitted by the House of Commons Standing Committee on National Defence in June 2018 regarding Canada and NATO. Recommendation 21 included a welcome call for the government to “...take a leadership role within NATO in beginning the work necessary for achieving the NATO goal of creating the conditions for a world free of nuclear weapons.” Emphasizing the urgency of this issue, the report called attention to several of the points raised by disarmament experts including the renewed risk of nuclear proliferation, potential deployment of tactical nuclear weapons, and changes in nuclear doctrines to lower the threshold of use. The report is a welcome sign of political consensus, and a testament to the influence of civil society, on a specific policy option that could contribute to gradual nuclear disarmament.

Ms. Mason further underscored key themes emerging from the day’s discussion, such as global dissatisfaction with stagnant disarmament trends, and the contrast between previous Canadian leadership and contemporary inaction, including boycotting of the Treaty on the Prohibition of Nuclear Weapons (TPNW).

Tom Sauer from the University of Antwerp in Belgium addressed the divergence of European civil society perspectives from the actions of NATO member states with regards to the TPNW. On the one hand, opinion polls show that most Europeans are against the presence of nuclear weapons in Europe and favour signing the Treaty. However, the issue is not adequately discussed or debated at a public level. Secrecy and lack of transparency on behalf of NATO make it difficult for both journalists and activists to engage the issue, and this limits the impact of peace movements.

Within NATO, it is clear that members are reluctant to lead efforts to change the Alliance’s nuclear posture, or to deviate from one another in other disarmament fora.

And yet leadership and change are possible. For example, the Netherlands is the only NATO member to have participated in the TPNW process, which itself was not anticipated just a few years ago. And while the Treaty may not eliminate nuclear weapons quickly, it is essential for stigmatizing their use – particularly in the current crisis – and stimulating new debate within civil society.

Discussion re-iterated the need for engagement on nuclear disarmament, diplomatically within NATO and with Russia, as well as by civil society and journalists. The Arctic was raised as an example of how a security community can be created around shared interests.

Part III: Political Disengagement

Limited participation on the parliamentary panel “Canadian Leadership on Nuclear Disarmament” illustrated the current political climate of *disengagement* with nuclear disarmament. All major Canadian

political parties were invited to present their positions. The NDP's Agricultural Critic, the **Hon. Alistair MacGregor**, (substituting for the Party Foreign Policy spokesperson who was travelling) was the only person to participate directly. Noting that his party has long opposed nuclear weapons, he asserted that it was a strong proponent of Recommendation 21 within the Standing Committee's report. MacGregor further questioned how Canada can be "back" while simultaneously failing to participate in the most important disarmament negotiations in years, and pointed to a shift in stance by the Liberal party from its time in opposition.

The Hon. Doug Roche read a statement provided by the current **Government of Canada** in response to a petition filed on behalf of constituents regarding the TPNW. It emphasized the government's actions to advance disarmament and its commitment to a pragmatic pursuit of a world without nuclear weapons that takes into account the current security environment. In this environment, the government does not believe that the Treaty will be effective in achieving nuclear disarmament and *does not intend to sign the treaty*. Instead, its diplomatic efforts are to focus on inclusive measures that unite nuclear and non-nuclear armed states in common goals, specifically the pursuit of a Fissile Materials Cut-off Treaty (FMCT).

A statement submitted by Elizabeth May, leader of the Green Party of Canada, congratulated Setsuko Thurlow on her Nobel recognition for her contributions to the TPNW and the work of the CNANW, referring to the current situation as an "apocalyptic age."

Discussion reiterated the importance of civil society expertise and advocacy, which Parliamentarians rely on for research and guidance. It was also noted that civil society should urge Parliamentarians to join the Parliamentarians for Nuclear Non-Proliferation and Disarmament Network (PNND).

Part IV: The Way Forward

Mr. Cirincione addressed the final session on "Next Steps for Nuclear Abolition," outlining the approach of the Ploughshares Fund to, first prevent the worst from happening, and then to build the world that we would like to see. This approach involves engaging politicians now to help them develop policies prior to future elections, finding ways to support positive goals set by the current Administration – including peace with North Korea – and supporting the next generation of civil society leadership on non-proliferation and disarmament. Calling ICAN "*a flare that goes up in the night*," he cautioned that the current disarmament effort will not be able to rely on a mass anti-nuclear movement for change, but instead must build ties between nuclear disarmament and other mass movements of today. For example, cross-cutting feminist and environmental movements likewise question existing power dynamics and strive for an alternative future.

The remainder of the session was used to reflect on the learnings of the day and to share ideas for future work.

Returning to Recommendation 21 of the report by the Standing Committee on National Defence regarding NATO and the elimination of nuclear weapons, several speakers emphasized writing to the government prior to the release of its official response, both to express support and to raise questions about how disarmament processes might be raised within various bodies of the Alliance. It was noted that this might be a fruitful avenue for Canadian leadership in the context of its bid for a seat at the UN Security Council.

Conversation also explored options for engaging Nuclear Weapons States (NWS) in steps toward disarmament. It was noted that the UN General Assembly (UNGA) Resolution on fissile materials negotiation in 2016 was supported by 159 states, including three yes votes from NWS and two abstentions. In this context, the Government of Canada continues to prioritize efforts to bring NWS around the table and to create space for dialogue on the issue of a FMCT. Others urged the UNGA First Committee meetings and the NPT Review Conference as opportunities for leadership. The importance of continued Canadian support for the JCPOA was emphasized.

From a civil society perspective, the re-institution of the annual civil society consultation on arms control and disarmament by Global Affairs Canada is viewed as a positive step. The opportunity for additional civil society engagement with the government through its feminist foreign policy and the newly created position of Ambassador for Women, Peace, and Security was noted with cautious optimism, so that the core value of *peace* within feminism is emphasized. Work to this effect is currently being done by the Canadian Women, Peace and Security Network.

Overall, there is a recognition of a David v. Goliath moment. Disarmament advocates are outgunned (no pun intended) and underfunded. Within civil society, we need to raise funds and raise our voices, build new relationships, and foster creativity in our efforts to advance a world free of nuclear weapons. The need is urgent.

November 25, 2018...

“Mindset”

CNWC Proposal for Nuclear Disarmament Bridge-building

SUMMARY. The current reopening of the nuclear arms race has provoked a crisis in international affairs and threatens the disintegration of the arms control regime. The viability of the Non-Proliferation Treaty is at stake. A bridge must be built between the nuclear weapons states (NWS) and the non-nuclear weapons states (NNWS), which are now polarized. This cleavage is deep and will not be bridged quickly. It is proposed that Canadians for a Nuclear Weapons Convention (CNWC) adopt a three-year plan of a conference each year in 2019, 2020 and 2021, i.e., before and after the 2020 Review Conference of the NPT. The aim of all three conferences, comprising civil society leaders, Canadian government officials, and international diplomats, is to provide a continuing effort to identify the common ground between the NWS and NNWS and build consensus on action steps leading to full implementation of Article VI of the NPT. CNWC, a project of the Canadian Pugwash Group, will work with nuclear disarmament leaders across Canada to create new momentum for nuclear disarmament.

1. **The Crisis.** Experts in the nuclear disarmament field, from Mikhail Gorbachev to William Perry, are expressing alarm over the rapid deterioration of nuclear disarmament and non-proliferation efforts. U.N. Secretary-General Antonio Guterres said, “We are one mechanical, electronic or human error away from a catastrophe that could eradicate entire cities from the map.” Criticizing President Trump’s stated intention to withdraw the U.S. from the Intermediate Nuclear Forces (INF) Treaty, International Pugwash warned against an increase in the salience of nuclear weapons globally and reverting “to a world ungoverned

by treaties constraining their actions.” This may lead “to the disintegration of the current arms control regime.” With all nuclear weapons states modernizing their nuclear arsenals, we are headed for a return to the reckless days of Cold War arms competition. Pugwash warns: “Decades of effort to build an architecture of restraint are unravelling because key lessons from the early Cold War years seem to have been forgotten.”

2. **The Plan.** It is proposed that CNWC take a long-range approach to achieving its goal of having Canada play a leading role in diplomatic efforts to achieve a Nuclear Weapons Convention. While no one wants to predict a failed NPT Review Conference in 2020, one would have to be wildly optimistic to anticipate a consensus in the present climate of international hostility and outright vitriol, as the recent session of the U.N. First Committee showed. We must think beyond the diplomatic wreckage that a failed NPT conference will present. As Secretary-General Guterres put it in his recent document, *Securing Our Common Future*, “Reversing the further deterioration of the international security environment requires a return to the mindset where the pursuit of nuclear disarmament is understood as the best means for preserving peace, preventing major inter-State war and maintaining stability in times of turbulence.” He has called for action in three areas: resuming dialogue and negotiations, extending the norms against nuclear weapons, and preparing for a world free of nuclear weapons. Taking a step back from the immediate discussions over such issues as compliance with the INF, the new Prohibition Treaty, and the Middle East impasse, CNWC can make a contribution by structuring conferences based on the common ground principle that a nuclear war can never be won and must never be fought. At first, rather than concentrating on the divisive points that separate the NWS and NNWS, we could outline and underline the broad goals of common survival around which the international community

can cling. For some, this may be seen as repeating what was learned (or should have been learned) long ago; but the rancour of the present reveals that the basic lessons, which drove the formation of the NPT nearly fifty years ago, need to be re-learned. In a calmer atmosphere where cooperation on points of unity is given a higher order than divisions over points of implementation, we may find a new path to the negotiations called for by Article VI.

3. **The Implementation.** It is proposed that a key group of 12-15 experts from both civil society and the government, be invited to convene for a two-day conference in Ottawa in the third week of April, 2019. In consultation with GAC, CNWC would draw up an agenda based on a Briefing Paper setting out the rationale for, and objectives of, a continuing set of conferences in 2020 and 2021. It is hoped that the group would attempt to find some cohesion and continuity in finding a new mindset for nuclear disarmament that all sides can agree on. Meeting, at some time, at the Thinkers' Lodge in Pugwash, N.S., in the tradition of specialists coming together in the Cold War years and finding a path forward, has the potential for thoughtful, joint work by dedicated civil society and government officials. With such a serious and long-range plan, funding would be sought from a foundation and other possible donors.

A Non-paper, June 3, 2019

Canada and NPT 2020: Responsibility and Creative Action

By Hon. Douglas Roche, O.C.

*Former Canadian Ambassador for Disarmament, and
Member Steering Committee, Canadians for
a Nuclear Weapons Convention*

This Non-paper is intended as a basis for discussion for the meeting with Cindy Termorshuizen, Director General, International Security Policy, GAC, June 3, 2019 to be attended by Ernie Regehr, O.C., Chairman, Canadians for a Nuclear Weapons Convention, and Hon. Douglas Roche, O.C.

SUMMARY. This Non-paper recognizes the contributions Canada has made to the preparatory process for the 2020 Review Conference of the Non-Proliferation Treaty and proposes new action. The paper's dominant theme is the necessity to preserve the integrity of the three pillars of the NPT. The three PrepComms for the NPT 2020 RevCon have shown the deep, and increasingly angry, polarization between nuclear weapons states and non-nuclear weapons states. The U.N. Institute for Disarmament Research said (May 21, 2019), the risk of nuclear weapons being used is at its highest since World War II. Despite a gulf in the thinking between the nuclear weapon states and the non-nuclear, one undeniable fact remains: the NPT as a legal instrument to curb proliferation and move, through comprehensive negotiations, to the elimination of nuclear weapons, while extending the peaceful use of nuclear energy, is in everyone's interests. A second successive failed review conference will eviscerate

the NPT to the extent where the weakening of its authority will lead to erosion. The “cornerstone” of the non-proliferation regime will have crumbled. A world of uncontrolled nuclear expansion will become intolerably dangerous.

The high-water mark of the NPT was the 2000 RevCon where an “unequivocal undertaking” to the total elimination of nuclear weapons was made via a program of 13 Practical Steps. This was achieved because of the successful negotiations between the New Agenda Coalition (NAC) and the NWS. Canada played a vital role in this instance, helping to link the NAC and NATO countries to reinforce pressure on the U.S. particularly to accede to the strong desire for a consensus (especially after the failure to obtain consensus in 1995, despite the indefinite extension of the NPT at that time). Canada was, and was seen as, helpful in strengthening the NPT. Another such moment, crying out for creative diplomacy, has arrived. Canada is challenged to call upon its store of political standing and diplomatic ability to work to save the NPT. Quietly working with such countries as Ireland and Mexico could contribute to the finding of consensus. Consideration should also be given to the idea for the RevCon to issue, after the opening round of ministerial speeches, a Ministerial Declaration reaffirming agreement on NPT principles. Such a unifying Declaration could improve the prospects to achieve a consensus final document at NPT/2020.

1. **Canada’s Approach.** Canada brought an uplifting approach to the NPT Third PrepComm (April 29-May 10, 2019). Calling nuclear disarmament a “noble” cause, Canada cited the Russell-Einstein Manifesto: “We have to learn to think in a new way.” Military victory with nuclear weapons is illusionary. Yet the stockpiling and modernization of nuclear weapons continues and is worsened by “reckless rhetoric.” Canada said: “Nuclear weapon states...should understand that the expectations of non-nuclear weapon states include that they both

shore up existing arms control agreements and actively pursue new initiatives.” Despite the absence of promising disarmament proposals from nuclear weapon states, “the appropriate response is to offer credible alternative solutions and proposals...”

2. **Determining Credibility.** What are “credible” proposals? It should be credible for the world community to agree on comprehensive negotiations for a legally-binding Nuclear Weapons Convention to eliminate nuclear weapons on a phased, verifiable basis, as the U.N. Secretary-General proposed in 2008 and the Canadian parliament unanimously called for in 2010 (a goal remaining at the basis of CNWC’s advocacy, as set out in letters to the Government of Canada October 25, 2018, November 9, 2018, and January 24, 2019). But the continued determination of the NWS to modernize their nuclear arsenals and the ongoing crises over North Korea, Iran, withdrawal from the INF, and poor prospects for the renewal of New START, plus the failure to even hold a conference dedicated to developing a Middle East Zone free of nuclear and other weapons of mass destruction have led to such a deterioration in international relations that it appears highly unlikely the NWS would join in such negotiations at this period in history. On the other hand, it is certainly not credible to assert, as the U.S. currently holds, that nuclear disarmament negotiations must await the emergence of a more cooperative world community. Where, then, does political and diplomatic “credibility” lie in proposing steps to save the NPT?
3. **Chairman’s Recommendations.** Credibility lies within NPT/CONF.2020/PC.III/CRP.4/Rev.1: “Recommendations to the 2020 Review Conference,” submitted May 9, 2019 to the Third PrepComm by the Chairman, Ambassador Syed Mohamad Haskin of Malaysia. It is the most no-

table amalgamation of nuclear disarmament views across the world. This revised draft superseded his first submission, which was criticized on both sides of the great NPT divide. The revision was also criticized and revealed the lingering divisions primarily over nuclear disarmament, Iran, the IAEA additional protocol, nuclear security, access to peaceful uses of nuclear technology, the Middle East WMDFZ and other related matters. We cite here only a few of the most controversial recommendations.

a) “Reaffirm the commitment by all States parties to the full and effective implementation of Article VI of the Treaty, and the unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under article VI of the Treaty and call for immediate action by the nuclear weapon States to comply with their relevant obligations.

b) “Reaffirm the importance of the preservation and continued implementation of bilateral arms control agreements between the Russian Federation and the United States, and the need for urgent progress in this regard, including the extension of the Treaty on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (the New START Treaty) and the negotiation of a successor agreement leading to further reductions.

c) “Call for concrete and measurable steps to reduce the alert status of nuclear weapon systems in a way that promotes international stability and security, with a view to the total elimination of nuclear weapons.

d) “Reiterate the deep concern at the catastrophic humanitarian consequences of nuclear weapons, including any intentional or accidental nuclear explosion and call for further consideration to prevent the devastation that would be visited upon all humanity by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard

the security of peoples; and reaffirm the need for all States at all times to comply with applicable international law, including international humanitarian law.

e) “Call for the immediate commencement of negotiations at the Conference on Disarmament, on a verifiable, non-discriminatory and universal treaty banning the production of fissile material for use in nuclear weapons or other nuclear explosive devices.

f) “Acknowledge the support by many States parties for the Treaty on the Prohibition of Nuclear Weapons and its complementarity to the NPT.

g) “Continue efforts towards the full implementation and the realization of the objectives of the 1995 resolution on the Middle East and take into account the conference for the negotiation of a binding treaty on the creation of a zone free of nuclear weapons and other weapons of mass destruction in the Middle East to be held in 2019.

h) “Note the strong support for the continued implementation of Joint Comprehensive Plan of Action as endorsed by United Nations Security Council resolution 2231. Stress the need for all parties concerned to maintain their constructive engagement so as to ensure that progress was made towards the full implementation of the Plan.”

4. **No Flag-waving.** While there is much more in the Chairman’s submission, which deals thoroughly with nuclear disarmament, non-proliferation, peaceful uses of non-proliferation, and regional issues, the points a) to h) cited above are the ones most likely to cause a breakdown in 2020 if appropriate bridging language is not found. A bridge cannot be built by two sides, waving flags on their mountains, expressing exasperation with each other. A serious attempt to find common ground must be made. The Chairman has provided the basis for a negotiated final document in 2020.

5. **Ministerial Declaration.** Common ground was found in the Reagan-Gorbachev dictum in 1985 that “a nuclear war cannot be won and must never be fought.” That led to the 2000 NPT consensus, which opened the door to meaningful progress toward the goals of Article VI. A reaffirmation of the NPT principles should now be made, and it would be most effective if a Ministerial Declaration were issued following the opening two days of NPT/2020 when ministers from the around the world would be asked to come to the U.N. to make an opening statement in support of the NPT on its 50th anniversary. The conference would then continue, delving into the details of the NPT pillars. The Ministerial Declaration would prepare the way for a consensus, which should be fervently sought, but even if a consensus at the end still proves elusive, the Declaration would save NPT/2020 from being deemed a “failure.”
6. **A “Living” NPT.** In addition to the global security value of the NPT, Para 43 of the Chairman’s submission illustrates vividly the added value of the NPT in resolving other, newer threats to humanity: *“Recognize the indispensable role of science and technology, including nuclear science and technology, in achieving social and economic development for all States parties, as reaffirmed in the Ministerial Declaration adopted at the 2018 IAEA Ministerial Conference on Nuclear Science and Technology. Underline the need for enhanced international cooperation, including through the efforts of the IAEA, to expand the extent that nuclear sciences and applications are utilized to improve the quality of life and the well-being of the peoples of the world including the achievement of the 2030 Agenda for Sustainable Development (A/RES/70/1), as well as the objectives of the Paris Agreement on Climate Change under the United Nations Framework Convention on Climate Change. Call on the United Nations development system to work closely with the IAEA*

to maximize the potential role of nuclear science and technology for development.” Highlighting a “living” NPT post-2020 should appeal especially to Canada’s values. Such a forward-minded approach would help improve the political atmosphere.

7. **Canada’s Effectiveness.** Canada, as a member of NATO, La Francophonie, the Commonwealth, and a close ally of the U.S., is instrumentally placed to work to advance the proposal for a Ministerial Statement and the search for bridging positions. Canada proved its ability to be an effective diplomatic player in nuclear disarmament by working closely with the New Agenda Coalition in driving the negotiations that produced the successful outcomes in 2000 and also in 2010. With respect to the future values of the NPT for the world, Canada actively participates in the IAEA’s work to provide access to safe, secure and sustainable nuclear energy to help the international community meet the Sustainable Development Goals. As its speech on peaceful use at the PrepComm showed, Canada recognizes that a strong NPT also contributes to the implementation of the Paris Agreement on climate change. There are multiple Canadian benefits in giving the highest priority to preserve intact this “cornerstone.”
8. **New Agenda Coalition.** Ever since its formation in 1998, the New Agenda Coalition (NAC: Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa) has exhibited a moderately progressive stance in advocating for the upholding of Article VI. NAC is the closest thing to a bridge between the tough-minded NWS and the aspirational NAM (which wants time-bound comprehensive negotiations on elimination to begin immediately). Reiterating its view that nuclear weapons “constitute a security risk for all states,” given in its Working Paper presented to the PrepComm (NPT/CONF.2020/PC.III/WP.35), NAC insists that “the current global security situation does not preclude, but

rather reinforces, the need for urgent action on nuclear disarmament.” Thus, calling for nuclear weapons reductions with benchmarks, increased accountability and transparency, NAC’s principal recommendations include:

- a) Remove nuclear weapons from high alert status;
- b) Support a conference to develop a treaty to establish a Middle East Zone free of nuclear and other weapons of mass destruction;
- c) Reaffirm that “a nuclear war cannot be won and must never be fought”;
- d) Reiterate deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and the need to comply with international humanitarian law’.
- e) Recognize the disproportionate impact of ionizing radiation on women and girls.
- f) Acknowledge the treaty on the Prohibition of Nuclear Weapons as an effective measure in full compatibility with the NPT.
- g) Increase public awareness of the risks of nuclear detonation through disarmament education and the work of civil society organizations.

9. **Prohibition Treaty.** With the exception of f), Canada can readily identify with NAC’s recommendations. On f), the Prohibition Treaty, Canada is already, along with many states, moving toward “acknowledging” the Treaty even if it is not yet prepared to join it. The Third PrepComm was notable in this respect: insulting language by opponents concerning the merits of the Treaty seems to have melted while the most ardent advocates have stopped saying the Treaty is of the essence. The Treaty is now presented as a step towards full negotiations and thus an aid to the NPT. That is the way it should be viewed, and several NATO states are clearly looking for a way to have some compatibility with the Treaty. Here, Canada should show leadership and simply acknowledge that the

language of the PrepComm Chairman in this respect (see 3 f) above) is conciliatory and healing.

10. **Expanding Canada's Contacts.** In moving forward the ideas presented in the Chairman's recommendations, Canada should work especially with two countries, Ireland and Mexico. In putting forth this suggestion, it is not meant to imply that Canada would stop working with the Non-Proliferation and Disarmament Initiative (NPDI), the 12-member group founded in 2010 to focus on practical steps to promote the consensus outcomes of the 2010 NPT Review Conference. However meritorious some of its recommendations, the NPDI does not appear to have the vitality to influence the NWS away from their hard-line maintenance of nuclear deterrence at the core of their NPT policies, which seems to result in their disdain of measures that could lessen dependence on nuclear weapons for security. A more vigorous, finely-tuned method is needed to move the NWS to a consensus view that is credible in saving that which all states claim is in their security interests — the NPT. It is not suggested here that Canada can be a "superman," but as experience shows, Canada has the ability — and it certainly has the responsibility — to do more to save the NPT. It should open up new means of communication and cooperation with two influential countries deeply committed to the NPT, Ireland and Mexico.

a) Ireland. No country has a more vested interest in saving the NPT than Ireland, the NPT's founder. Through RevCon after RevCon, Ireland has been a moderate and progressive voice. At the 2019 PrepComm, Ireland said the NPT itself "represents what is possible through effective multilateralism." The country's principal statement said: "In 2000 and 2010, we came together...in finding agreement and furthering progress on nuclear disarmament as mandated by Article VI...Yet, the nuclear weapon states continue to place nuclear weapons at the

heart of their military doctrines.” It rejected the idea that the present environment is not conducive to disarmament. “Ireland fully aligns with the Secretary-General’s view that disarmament is more essential in a deteriorated security environment.” Noting that the government intends to ratify the Prohibition Treaty imminently, Ireland said the new Treaty “fills the notable gap in supporting mechanisms for the disarmament pillar.” Ireland, a close friend of Canada, was the chief inspiration and a founding member of the New Agenda Coalition.

b)

Mexico. Mexico, which originated the Treaty of Tlatelolco in 1967, is a moderating influence in the NAM and also belongs to the NPT. Like Canada, its economic relationships with the U.S. are deep. It is a strong proponent of the NPT and also an early supporter of the Prohibition Treaty. At the PrepComm, Mexico called for “creating bridges where dialogue does not exist.” It stated: “We cannot open the door to conditions for the fulfillment of legally binding obligations. But we can talk about how we implement our obligations...” The NWS must comply with their legal obligations “to ensure the integrity of the machinery it has cost so much work to build.”

11. **Boosting Credible Decisions.** Now is the time for Canada to reach out to those who have a deep interest in the success of the NPT. This means developing a working relationship with the incoming RevCon president, Ambassador Rafael Grossi of Argentina, who will undoubtedly be looking for those willing to be “Friends of the Chairman.” Hitherto, Canada has concentrated heavily on advancing the prospects for FMCT negotiations as its main contribution to the NPT. But NPT/2020 will not turn on whether negotiations for a FMCT are finally started or not. It will turn on the attitude of the key states, not least the NWS and especially the U.S., to saving the credibility of the NPT. Boosting

politically credible decisions for NPT/2020 would be creative action by Canada with long-term benefits.

A Bifurcated Global Nuclear Order

Thou May vs. Thou Shall Not Possess
or Use Nuclear Weapons

BY RAMESH THAKUR *

Abstract

The very destructiveness of nuclear weapons makes them unusable for ethical and military reasons. The world has placed growing restrictions on the full range of nuclear programs and activities. But with the five NPT nuclear powers failing to eliminate nuclear arsenals, other countries acquiring the bomb, arms control efforts stalled, nuclear risks climbing, and growing awareness of the catastrophic humanitarian consequences of nuclear war, the United Nations adopted a new treaty to ban the bomb. Some technical anomalies between the 1968 and 2017 treaties will need to be harmonized and the nuclear-armed states' rejection of the ban treaty means it will not eliminate any nuclear warheads. However, it will have a significant normative impact in stigmatizing the possession, use and threat of use of nuclear weapons and serve as a tool for civil society to mobilize domestic and world public opinion against the doctrine of nuclear deterrence.

I. INTRODUCTION

Seventy-one years ago, on a bright, cloudless morning, death fell from the sky and the world was changed. A flash of light and a wall of fire destroyed a city and demonstrated that mankind possessed the means to destroy itself

US President Barack Obama in a speech at the
Hiroshima Peace Memorial, 27 May 2016.¹

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¹ <<https://obamawhitehouse.archives.gov/the-press-office/2016/05/27/remarks-president-obama-and-prime-minister-abe-japan-hiroshima-peace>>. Cynics might note that the president's vastly accelerated

For close to half a century, nuclear peace has rested on the normative pillars of the Nuclear Non-proliferation Treaty (NPT). Meeting in New York in two sessions on 27–31 March and 15 June–7 July, a UN-mandated conference to negotiate a legal instrument to prohibit nuclear weapons adopted the Nuclear Weapons Prohibition Treaty (NWPT) on 7 July with 122 states voting in favour.² The treaty prohibits the acquisition, development, production, manufacture, possession, transfer, receipt, testing, hosting, use, and threat of use of nuclear weapons.³ It was opened for signature in the UN General Assembly on 20 September 2017, signed by fifty states on the day, and will come into force ninety days after fifty states have ratified it. It will be legally binding, but only for signatory states. The normative prop for the new initiative was humanitarian principles. In turn, the humanitarian focus empowered advocates to transcend national and international security arguments.

All the states voting for the NWPT are also parties to the existing NPT and represent nearly two-thirds of its membership. But the remaining one-third of NPT states parties, all of whom—with the three exceptions of Japan which gave an opening statement on 27 March explaining its opposition to the conference and then walked out, Singapore which participated in the conference but abstained on the vote, and the Netherlands which attended but voted against the treaty's adoption on 7 July—boycotted the UN conference. For the first time therefore the global nuclear order has been effectively bifurcated and the world has two different global treaties for setting nuclear policy directions, goals, and norms.

Cognizant of the stern admonition from Athens to Melos that questions of right and justice apply only to relations among equals in power, while for others “the strong do what they can and the weak suffer what they must”;⁴ the theory of “[r]ealism maintains that universal moral principles cannot be applied to the actions of states.”⁵ Yet even Morgenthau hedged his bets when he wrote of “the moral dignity of the national interest.”⁶ Subsequent history has modified the Thucydides thesis with a steady reduction in societal, national, and international violence from the hunter-gatherer civilizations to modern times, based on empathy, self-control, reason, and moral sense as “the better angels” of human nature.⁷ To paraphrase the familiar mantra of Realism, international politics consists of the struggle

program of drone strikes in the Afghanistan-Pakistan badlands was responsible for much “death falling from the sky” in that unhappy region of the world. See Ramesh Thakur, *Balancing Competing Interests and Values: Drone Strikes as National Policy but International Crime?*, in 15 GLOBAL COMMUNITY YILJ 2015, G. Ziccardi Capaldo Gen. ed., 171–200 (2016).

² The formal title is the Treaty on the Prohibition of Nuclear Weapons. The formal title of the old treaty is Treaty on the Non-proliferation of Nuclear Weapons, commonly called the Nuclear Non-proliferation Treaty. This is abbreviated to NPT and not TNPW. Similarly with the biological and chemical weapons conventions. Consistent with this practice, it seems to make more sense to call the ban treaty the Nuclear Weapons Prohibition Treaty in common usage, and to abbreviate it to the NWPT. Conversely, calling it the TPNW will highlight the differences instead of emphasizing the continuity with the NPT.

³ A/CONF.229/2017/L.3/Rev.1, available at <<http://www.undocs.org/en/a/conf.229/2017/L.3/Rev.1>>.

⁴ Thucydides, 1910. *History of the Peloponnesian War*, “Melian Dialogue” (London: J. M. Dent, 1910), at 5.89. English translation available online at the Perseus Project: available at <<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0200%3Abook%3D5%3Achapter%3D89%3Asection%3D1>>.

⁵ HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* (4th ed. 1967), at 10.

⁶ *Id.*, *IN DEFENSE OF THE NATIONAL INTEREST: A CRITICAL EXAMINATION OF AMERICAN FOREIGN POLICY* (1951), at 33.

⁷ STEVEN PINKER, *THE BETTER ANGELS OF OUR NATURE* (2011).

for ascendancy of competing normative architectures conducted on two axes. One axis consists of military muscle, economic weight, and geopolitical clout. The second axis consists of values, principles, and norms.

That is, over the centuries the pendulum of human behaviour has swung surely, albeit slowly and in a jagged rather than linear trajectory, from the “pure” power towards the normative end of the arc of history. Of course, in every era, great powers have a disproportionate ability to influence the prevailing norms and laws. This is no different from domestic systems where also, even if every citizen has the same one vote, the social elite has much greater access to the political process for writing the rules to govern society. Over the last few centuries, Western ideas and values have found expression as “universal” norms and been embedded in the dominant institutions of global governance not necessarily because they are intrinsically superior, but more importantly behind battleships, missiles, and tanks.

Acting as the hegemon, the United States took the lead in establishing the regimes and institutions of the post-1945 liberal international order for ensuring stability, promoting security, and advancing prosperity in the international system as global public goods, albeit also taking care to embed its own set of preferences and values. The United States will remain the first among equals and retain an unmatched edge in the ability to form coalitions of allies and friends and mobilize networks of civil society actors and individuals. But by 2030 Asia could be bigger in economic size and strategic weight than Europe and the United States combined. The shift in power and influence, and in consequence in the geopolitical centre of gravity, from the previously ascendant North Atlantic countries to Asia and the Pacific has become a staple of analysis and commentary.⁸ The centrepiece of that is the relative waning of US power and the steady accretion of power, wealth, and clout by China.⁹ As China fills out as a major power, uncontested US primacy will become increasingly unsustainable. There is a second dynamic at play in Asia with potentially far-reaching implications for global order also, namely the parallel rise of India in the shadow of China by about thirteen years.

As other states become economically and militarily powerful, their trains of global interests expand and they seek commensurate influence over international political and economic institutions. The old NPT and the new NWPT embed the geopolitical and normative balance of power, respectively, forty-nine years apart in time. The vague language of Article VI of the NPT calling for an eventual negotiated elimination of nuclear weapons, in comparison to the precise non-proliferation obligations of the treaty, reflects the disproportionate influence of the two powerful states that drove the negotiations around the middle of the twentieth century, namely the United States and the Soviet Union.¹⁰ By contrast, the prohibition treaty reflects the preferences of the majority of states in a multipolar twenty-first century. Increasingly exasperated by the failure of the nuclear weapons states (NWS)

⁸ *Global Trends 2030: Alternative Worlds* (Washington DC: National Intelligence Council, Document 2012-001, 2012), available at <<https://globaltrends2030.files.wordpress.com/2012/11/global-trends-2030-november2012.pdf>>; UNDP, *Human Development Report 2013—The Rise of the South: Human Progress in a Diverse World* (New York: United Nations Development Programme, 2013).

⁹ Kevin Rudd, *U.S.-China 21: The Future of U.S.-China Relations Under Xi Jinping—Toward a New Framework of Constructive Realism for a Common Purpose* (Cambridge MA: Belfer Center for Science and International Affairs, Harvard University, 2015).

¹⁰ George Perkovich, *The Nuclear Ban Treaty: What Would Follow?* (Washington DC: Carnegie Endowment for International Peace, 2017), at 5, available at <<http://carnegieendowment.org/2017/05/31/nuclear-ban-treaty-what-would-follow-pub-70136>>.

to achieve nuclear disarmament anytime soon, driven by fear of a catastrophic nuclear war with incalculable humanitarian consequences if nuclear weapons are not abolished, and inspired by humanitarian principles, a growing number of non-NWS joined with civil society actors to negotiate an alternative prohibition treaty.

The treaty is historic on five counts. To begin with, it marks the completion of the agenda of banning all classes of weapons of mass destruction (WMD). The biological and chemical weapons conventions of 1972 and 1993, respectively, had already proscribed biochemical weapons in legally binding international instruments. The NWPT bans nuclear weapons. The existing regime regulating nuclear weapons, the NPT, banned their proliferation to anyone else but granted temporary exemptions for the continued possession of nuclear weapons by the five NWS that already had them in 1968. Although the NWPT does not eliminate any nuclear weapons, the normative prohibition is historic in closing the legal gap in the prohibition of all WMD for everyone without discrimination.

Second, the NWPT's adoption marks the first divergence between the United Nations and the NPT. Hitherto they have had a mutually reinforcing relationship. The NPT has its origins in several resolutions adopted in the General Assembly calling for and authorizing negotiations for such a global convention. The International Atomic Energy Agency (IAEA) oversees the peaceful transfer and applications of nuclear energy and in that capacity acts as the international community's nuclear watchdog in overseeing compliance with NPT safeguards and non-proliferation obligations. Instances of non-compliance are referred to the UN Security Council (UNSC) for possible follow-up action, including a range of enforcement measures. But while almost two-thirds of NPT parties voted to adopt the NWPT, a strong one-third minority, including all the nuclear-armed states¹¹ and the five permanent members of the Security Council (P5)—who coincidentally are the five NPT-licit NWS—refused to engage in the negotiations.

Third, this is the first occasion on which essentially the states on the periphery of the international system have adopted a humanitarian law treaty aimed at imposing global normative standards on the major powers of the system and the Euro-Atlantic community. The major principles of international, humanitarian, and human rights laws have their origins in the major powers of the European international order that was progressively internationalized. The world's majority of small states and developing countries have been the objects of international law developed in major Western capitals.¹² The NWPT support base includes the overwhelming majority of states from the global South and some from the global North, with Austria, Ireland, New Zealand, and Switzerland having been among the leaders. The treaty's opponents include all nine nuclear-weapons-possessing states (five NWS plus India, Israel, North Korea, and Pakistan), all NATO allies, and Australia, Japan, and South Korea. Thus for the first time in history, a powerful new instrument of international humanitarian law has been created against the determined opposition of the majority of Western states and all the major powers.¹³

¹¹ Under the NPT, only countries that had exploded a nuclear device before 1 January 1967 can be called NWS. In this chapter, "NWS" refers to these five states while "nuclear-armed states" is used for all countries that actually possess nuclear weapons.

¹² Ramesh Thakur, *Global Norms and International Humanitarian Law: An Asian Perspective*, 841 INTERNATIONAL REVIEW OF THE RED CROSS 19–44 (March 2001).

¹³ Kjølvi Egeland, *Banning the Bomb: Inconsequential Posturing or Consequential Stigmatization?*, 24 GLOBAL GOVERNANCE (2018, forthcoming).

Fourth, this is the first time that the like-minded liberal internationalist states find themselves in the dissident minority in opposing a cause championed by the Nobel Peace Committee. On 6 October, the 2017 Nobel Peace Prize was awarded to the International Campaign to Abolish Nuclear weapons (ICAN) in recognition of its decade-long “ground-breaking efforts to achieve a treaty-based prohibition” of nuclear weapons by drawing “attention to the catastrophic consequences of any use” of these weapons.¹⁴ The disconnect is especially acute for Norway which had hosted the first humanitarian consequences conference in 2013. While other Nobel prizes are determined by the Swedish Academy, the Peace Prize is awarded by a Norwegian Committee. On 10 December Norway will face the visual embarrassment of the glittering annual Nobel Peace Prize ceremony in Oslo that recognizes a treaty it opposed and honours an NGO—ICAN—to which it cut funding after the election of a conservative government in October 2013.

Fifth, reflecting the second and third arguments, this is the first occasion in the UN system when the General Assembly, where all 193 member states have one vote, has asserted itself against the P5. Previously the Assembly has sometimes acted in the face of a deadlock in the fifteen-member Security Council. This is the first issue on which it has defied the P5, that too on national security. There was a hint of this shift in the balance of power from the geopolitical to the normative centre of gravity in 2016 in the manner in which the General Assembly inserted itself into the process for selecting the secretary-general.¹⁵ Had the old secretive process been followed, it is unlikely that António Guterres would have been selected.

This chapter begins with an account of the profound impact of nuclear weapons on military strategy and why the weapons pose an existential threat to life and civilization. The second part describes the considerable achievements and strengths of the NPT but also the increasing exhaustion of its normative potential. It then highlights how nuclear risks and threats have multiplied and intensified in the second nuclear age with fewer numbers of warheads in global stockpiles, but spread among more countries and with greater possibility of use. The fourth part explains why the major contribution of the new ban treaty is intended and will be to affirm prohibition as a global norm for all states, even though its legal obligations will extend only to signatory states. The final section then describes some tensions between the two global treaties that will need to be managed if they are not to damage and undermine each other.

II. DAWN OF THE NUCLEAR AGE

Currently the world faces two existential threats: climate change and nuclear Armageddon—and the bomb can kill us all a lot sooner and faster. Nuclear weapons are the most lethal, powerful, destructive but also indiscriminately inhumane weapons in history. They were invented to pre-empt Germany, used to defeat Japan, and deployed most extensively against the former Soviet Union. Witnessing the first successful atomic test on 16 July 1945, Robert Oppenheimer, director of the Manhattan Project that developed the A-bomb, recalled the sacred Hindu text, the Bhagvad Gita: “If the radiance of a thousand suns were to burst at once into the sky, that would be like the splendour of the mighty one.” Birth and death are

¹⁴ AFP, *Anti-Nuclear Campaign ICAN Awarded Nobel Peace Prize*, JAPAN TIMES, 6 October 2017, available at <<https://www.japantimes.co.jp/news/2017/10/06/world/anti-nuclear-campaign-ican-wins-nobel-peace-prize/>>.

¹⁵ See Ramesh Thakur, *Choosing the Ninth United Nations Secretary-General: Looking Back, Looking Ahead*, 23 GLOBAL GOVERNANCE 1–13 (2017).

sybiotically linked in the Hindu cycle of life. So Oppenheimer recalled too the matching verse from the Gita: "Now I am become Death, the destroyer of worlds."¹⁶

It is a sobering reflection that two to three generations of people have grown up under the shadow of the mushroom cloud. For over seven decades, Americans, Europeans, and Russians (and others for shorter periods) have accepted nuclear deterrence as a proper and dependable cornerstone of national and international security policies. Astonishingly, such a fundamental change in relations among different nations was put into place without serious public debate. Only in the 1980s was there the sort of intensive and widespread call for justifying the strategy of nuclear deterrence that one would have expected at the start of the nuclear era. The debate was reopened in the last five years around a discussion of the humanitarian consequences of the use of nuclear weapons and culminated in the adoption of the NWPT.

Nuclear weapons ushered in significant military changes as the quantitative measure of their destructive power brought about a qualitative shift in assessing their ethical underpinnings and political utility. This was well captured in the first two sentences of Barack Obama's 2016 speech in Hiroshima quoted at the start of this chapter. The death and damage inflicted on Hiroshima on 6 August 1945 was comparable in scale to the destruction visited upon Dresden, Hamburg, and Tokyo during the Second World War. But there was one important difference: Hiroshima was destroyed by a single bomb.

The enormous destructiveness of nuclear weapons has produced four major changes in military strategy. First, modern delivery systems mean that there is no protection against nuclear bombs. The only defence against nuclear weapons is to be certain of destroying every enemy missile and bomber. Such certainty is neither available today nor likely in the foreseeable future. Second, nuclear weapons have not just made old-fashioned defence impossible, they have also destroyed the gallantry of olden days which pitted soldier against soldier and left non-combatants alone if not in peace. The historical trend towards blurring the line between military and civilian sectors, already in evidence in the two world wars, was completed with nuclear weapons. Third, the destructiveness of nuclear weapons and the speed of their delivery systems mean that wars will no longer be protracted affairs. Where conventional wars can go on for years, the most important lines in a nuclear tragedy will be the opening words of the first act. Nuclear war could be over in days or even hours, denying leaders a chance to think again and change their minds. The final consequence results from the third fact as well. Because of the speed of nuclear war, a country cannot afford, as it could in the past, to mobilize fully only after or with the imminent onset of hostilities. Nuclear forces have to be in a state of constant readiness at full strength.

In 1962, with America trapped in an expanding arms race with the Soviet Union, US President John F. Kennedy said that nuclear weapons "seem to offer us present security but threaten the future survival of the human race." He described the bomb as having turned the world into a prison in which humanity awaits its execution and called for progress on nuclear disarmament.¹⁷ Speaking in Berlin on 19 June 2013, his successor Barack Obama

¹⁶ ROBERT JUNGK, *BRIGHTER THAN A THOUSAND SUNS: A PERSONAL HISTORY OF THE ATOMIC SCIENTISTS* (1958), at 201. This account was later repeated in an interview for the NBC television documentary "The decision to drop the bomb," (1965), available on YouTube at <<https://www.youtube.com/watch?v=ZuRvBoLu4t0>>. There is a second connection to Hinduism alluded to by these quotations. The test was named Trinity. In Hinduism, the trinity refers to Brahma, Vishnu and Shiva: the three gods of, respectively, creation, preservation, and destruction.

¹⁷ President John F. Kennedy, *State of the Union Speech*, 11 January 1962, available at <<http://www.presidency.ucsb.edu/ws/index.php?pid=908>>.

said: “We may no longer live in fear of global annihilation, but so long as nuclear weapons exist, we are not truly safe.”¹⁸ Yet even for the Obama administration, the twin problems concerning nuclear weapons were the threat of nuclear terrorism and the risks of nuclear proliferation, not the failure on the disarmament front: “The threat of global nuclear war has become remote, but the risk of nuclear war has increased. Today’s most immediate and extreme danger remains nuclear terrorism . . . Today’s other pressing threat is nuclear proliferation.”¹⁹

In a world in disarray,²⁰ we are at an inflection point in nuclear affairs. Boundaries are eroding between nuclear and conventional munitions; regional, global, tactical, and strategic warheads; and nuclear, cyber, and space domains. Geopolitical tensions have risen in Europe, the Middle East, South Asia, and East Asia. Little wonder that former US Defense Secretary William Perry warns that “the danger of a nuclear catastrophe today is greater than during the Cold War.”²¹ Great power tensions make nuclear arms control more difficult but also more urgent. Nuclear weapons may or may not have kept the peace among various groups of rival states; they could be catastrophic for the world if ever used by both sides in a war between nuclear-armed rivals; and the prospects for their use have grown.

III. NPT: ACCOMPLISHMENTS, INADEQUACIES, EXHAUSTION

The NPT was signed in 1968 and came into force in 1970 as the centrepiece of the global non-proliferation regime²² that codified the international political norm of non-nuclear weapons status. It tries to curb proliferation by a mix of incentives and disincentives. In return for intrusive end-use control over imported nuclear and nuclear-related technology and material, non-NWS were granted access to nuclear technology, components, and material on a most-favoured-nation basis. The NPT regime also includes a number of treaties restricting nuclear testing. The Partial Test Ban Treaty (1963) outlawed atmospheric, space, and underwater nuclear testing. The Threshold Test Ban Treaty (1974) outlawed underground tests of more than 150kt yield. The elusive goal of a total ban on nuclear testing was seemingly realized in 1996 with the endorsement by the UN General Assembly of the Comprehensive Nuclear-Test-Ban Treaty (CTBT).

After the adoption of the NPT in 1968, there were two great pillars of the normative edifice for containing the nuclear horror: the doctrines of strategic deterrence which prevented their use among those who had nuclear weapons; and the non-proliferation regime, centred

¹⁸ “Remarks by President Obama at the Brandenburg Gate—Berlin, Germany” (Washington DC: White House, Office of the Press Secretary, 19 June 2013), available at <<http://www.whitehouse.gov/the-press-office/2013/06/19/remarks-president-obama-brandenburg-gate-berlin-germany>>.

¹⁹ Secretary of Defense, *Report on Nuclear Employment Strategy of the United States Specified in Section 491 of 10 U.S.C.* (Washington DC: Department of Defense, RefID 6-9963D19, 12 June 2013), at 2.

²⁰ RICHARD HAASS, *A WORLD IN DISARRAY: AMERICAN FOREIGN POLICY AND THE CRISIS OF THE OLD ORDER* (2017).

²¹ Quoted in Doyle McManus, *The New Nuclear Arms Race*, LOS ANGELES TIMES, 3 April 2016, available at <<http://www.latimes.com/opinion/op-ed/la-oe-0403-mcmanus-nuclear-danger-20160403-column.html>>.

²² I use the term “regime” to refer to norms, rules, and behaviour around which actor expectations converge in the issue-area of non-proliferation even in the absence of formal international organization. The non-proliferation regime includes the norms of international nuclear behaviour as well as the network of international treaties, institutions, export controls, and nuclear trade agreements.

on the NPT that both outlawed their spread to others and imposed a legal obligation on the NWS to eliminate their own nuclear arsenals through negotiations—their only explicit multilateral disarmament commitment. Today both pillars are at risk of crumbling.

A. Proliferation Risks and NPT Inadequacies

The lengthening list of proliferation-sensitive concerns includes North Korea's unchecked weaponized nuclear capability and continuing nuclear and missile tests aimed at acquiring an intercontinental capability to bring the US mainland within range of its weapons. There have also been worries in the past about Iran's nuclear program, reports of Saudi Arabia's off-the-shelf purchase of nuclear weapons,²³ evidence of mild misdeeds by South Korea,²⁴ Taiwan,²⁵ and Egypt,²⁶ apprehensions of a new uranium enrichment plant that would give Brazil a nuclear breakout capability,²⁷ evidence of an extensive multinational nuclear black market that demonstrated the inadequacy of the existing export controls system, and the prospect of terrorists acquiring nuclear weapons. Pakistan is often dubbed the most dangerous place on earth because of the lethal nexus of an unstable military dictatorship, Islamist groups bitterly hostile to the West, terrorists, and nuclear weapons.

There are several categories of proliferation-sensitive actors:

1. **Vertically proliferating NWS:** Those who increased their nuclear stockpiles and upgraded their nuclear lethality from inside the NPT regime;
2. **NPT-irresponsible NWS:** Those who export nuclear/missile materials, technology, and expertise in violation of international commitments. According to a former US ambassador to the United Nations, "Of all the external actors, China bears primary responsibility for Pakistan's and North Korea's possession of nuclear weapons and ballistic missiles. For its own strategic reasons, China gave both countries direct financial, scientific and technological assistance and then flew political cover at the United Nations and elsewhere";²⁸
3. **Fragmenting NWS,** or NPT splinters: When the old Soviet Union broke up, for instance, we faced the prospect of an additional three NWS (Belarus, Kazakhstan, Ukraine). Fortunately, they were persuaded to forgo the nuclear option;
4. **NPT cheats:** those who have signed the NPT but may be engaged in activities in violation of their obligations;
5. **Nuclear terrorists:** It defies credulity that nuclear weapons and materials can be kept secure in government inventories and never be obtained by any terrorist group. While a government's nuclear capability can be seized and destroyed, it is impossible to capture or kill every single terrorist and his/her last piece of dynamite, Semtex or timing mechanism;

²³ Jonathan Power, *Turning a Blind Eye to Nukes: The US and Saudi Arabia?*, INTERNATIONAL HERALD TRIBUNE, 4 August 2004.

²⁴ *South Korea Says It Enriched Uranium Four Years Ago*, JAPAN TIMES, 3 September 2004; *ROK enrichment tests conducted '3 times'*, DAILY YOMIURI, 5 September 2004.

²⁵ *Taipei Held Nuke Experiments as Late as Mid-1980s*, JAPAN TIMES, 14 October 2004, and *Concern over Taiwan Nuclear Ambitions*, JAPAN TIMES, 17 October 2004.

²⁶ *Egyptian Scientists Produced Nuclear Material: Diplomats*, JAPAN TIMES, 6 January 2005.

²⁷ Larry Rohter, *If Brazil Wants to Scare the World, It's Succeeding*, N.Y. TIMES, 31 October 2004.

²⁸ John Bolton, *The Danger of a Jihadist Pakistan*, WALL STREET JOURNAL, 28 August 2017, available at <<https://www.wsj.com/articles/the-danger-of-a-jihadist-pakistan-1503960880>>.

6. **“Virtual” NWS:** Countries can acquire and maintain all the materials and skills required to make nuclear weapons quickly once a decision is made to do so. Thus Ichiro Ozawa of Japan’s Liberal Party warned China not to forget that Japan could easily make 3,000–4,000 nuclear weapons;²⁹
7. **Missile proliferators:** Missiles are an acutely destabilizing form of weaponry because little defence is available against them. Armed with biological, chemical or nuclear warheads, they can be lethal.

The challenge on the international security front is thus fourfold. First, the five NPT-licit NWS (China, France, Russia, the United Kingdom, and the United States: the N5) have simply disregarded their NPT Article VI obligation to disarm. Second, three states lie outside the NPT and have gone down the weapons path: India, Israel, and Pakistan. Third, the NPT is an intergovernmental agreement and therefore does not cover non-state groups, including terrorists, who might be pursuing nuclear weapons. It is not at all clear how the international normative architecture can be extended to cover them on legislative, operational, and compliance dimensions. And fourth, some NPT members may be trying to cheat on their non-proliferation obligations and be pursuing the weapons option through stealth. For most of this century this was a real concern regarding Iran’s nuclear program until the world effectively agreed to stop its weapons pursuit by conceding a measure of capability short of crossing the threshold.³⁰ This was done through a multilateral agreement in July 2015 endorsed by the UNSC that imposed a robust transparency, inspections, and consequences regime.³¹

At the heart of the NPT lie three bargains involving nuclear energy, non-proliferation, and disarmament. It permitted the N5 to keep nuclear weapons but work to eliminate them through negotiations, and prohibited their acquisition by anyone else. Despite being one of the most successful arms control agreements in history, over the years the NPT has built up an accumulating series of anomalies, shortcomings, flaws, and gaps between promise and performance.³² The accumulating crises revealed several major gaps in the arms control and disarmament regime:

1. Lack of NPT universality;
2. The continuing existence of stockpiles of nuclear weapons;
3. Lack of a nuclear weapons convention (NWC) for eliminating all nuclear weapons;
4. Lack of verification machinery and compliance mechanisms for the NPT Article VI disarmament obligations;
5. Lack of a credible and binding inspections regime for non-proliferation;
6. Lack of agreed criteria to assess proliferation threats;
7. Lack of a basis in international law to enforce non-proliferation norms for states outside the treaty regimes; and
8. Inapplicability of norms and regimes to non-state actors.

²⁹ As reported in the JAPAN TIMES, 6 April 2002.

³⁰ Ramesh Thakur, *To Stop Iran Getting the Bomb, Must We Learn to Live with Its Nuclear Capability?*, 36 STRATEGIC ANALYSIS (March 2012), at 328–334.

³¹ RAMESH THAKUR, THE UNITED NATIONS, PEACE AND SECURITY: FROM COLLECTIVE SECURITY TO THE RESPONSIBILITY TO PROTECT (2d ed., 2017), at 173–177.

³² RAMESH THAKUR, NUCLEAR WEAPONS AND INTERNATIONAL SECURITY: COLLECTED ESSAYS (2015), at 182–197.

Some NPT weaknesses are not just intrinsic, but were intentional. For example the wording of Articles I and II regarding the obligations of NWS and non-NWS deliberately permits the NWS to transfer nuclear weapons to other countries (Cold War allies at the time)—that is, engage in geographical proliferation—as long as control of the weapons remained in NWS hands. The subsequent popularity of regional nuclear-weapon-free zones (NWFZ) owed much to the desire to plug this loophole. Such zones cover virtually the entire southern hemisphere but are conspicuously scarce north of the equator, with the exceptions of Central Asia and Mongolia as regional and single-state NWFZ, respectively. The desire to marry two possibly incompatible goals—President Dwight Eisenhower’s vision of “atoms for peace” and non-proliferation—produced the odd juxtaposition of Articles III (on safeguards) and IV (on the “inalienable right” of states to use nuclear energy), and opened the door for developments in North Korea and Iran. For nuclear energy for peaceful purposes can be pursued legitimately to the point of being a screwdriver away from a weapons capability.

Other NPT weaknesses became apparent with the benefit of hindsight. By failing to include clearly timetabled, legally binding, verifiable, and enforceable disarmament commitments, it temporarily legitimized the nuclear arsenals of the NS. The imbalance of reporting, verification, and compliance mechanisms between non-proliferation and disarmament in the NPT regime has also over time served to erode seriously the legitimacy of this centrepiece of the global arms control effort. By relying on the promise of signatories to use nuclear materials, facilities, and technology for peaceful purposes only, it empowered them to operate dangerously close to a nuclear weapons capability. It proscribed non-nuclear states from acquiring nuclear weapons, but failed to design a strategy for dealing with non-signatory states parties. It permits withdrawals much too easily. Verification and enforcement are one step removed to the extent that the IAEA acts as a buffer between the NPT and the UNSC. Because there is no standing agency or secretariat, the NPT depends on five-year review conferences for resolving implementation problems. These operate by the consensus rule, which does not make for decisive resolution of contentious issues.

As well as a deepening legitimacy deficit owing to failures on the disarmament front (discussed below in III.B), the NPT also suffers from an institutional deficit.³³ With no secretariat, standing bureau or executive council, it betrays a debilitating lack of continuity and oversight. There is no provision to convene an emergency meeting of parties to discuss a grave threat or provocation to the treaty, such as a notice of withdrawal. Given their dominance in the NPT framework, the five NWS should be leaders in strengthening its institutional machinery, creating and funding an implementation support unit, launching empowered annual meetings with provisions for emergency meetings to be convened, recommending continuity and executive oversight between review conferences, promoting greater transparency and accountability mechanisms, etc.

In addition to these weaknesses, five significant anomalies have accumulated over almost five decades and now weigh down the NPT regime close to the point of rupture. First, the definition of a NWS is chronological—a country that manufactured and exploded a nuclear device before 1 January 1967. India, Pakistan, Israel, North Korea—even Iran—could test, deploy, and even use nuclear weapons, but cannot be described as NWS. Conversely, Britain and France could dismantle their nuclear edifice and destroy their nuclear arsenals, but would still count as NWS. This is an Alice-in-Wonderland approach to affairs of deadly

³³ Paul Meyer, *The Nuclear Non-proliferation Treaty: Fin de Régime?*, ARMS CONTROL TODAY (April 2017), available at <<https://www.armscontrol.org/act/2017-04/features/nuclear-nonproliferation-treaty-fin-de-regime>>.

seriousness. On the other hand, the NPT definition cannot realistically be opened up for revision through a formal amendment of the treaty with all the unpredictable consequences.

Second, even as the threat from non-state actors has grown frighteningly real, multilateral treaties like the NPT can regulate and monitor the activities only of states. Abdul Qadeer Khan's underground nuclear bazaar, that merrily sold nuclear technology, components, and weapons designs to Iran, Libya, and North Korea,³⁴ showed how porous is the border between private and state rogue actors. A robust and credible normative architecture to control the actions of terrorist groups who can acquire and use nuclear weapons must be developed outside the NPT.

Third, North Korea's open defiance, spread over many years, shows that decades after a problem arises, we still cannot agree on an appropriate response inside the NPT framework. It becomes increasingly difficult to defang tyrants of nuclear weapons the day after they acquire them. The United Nations seems incapable of doing so the day before. If international institutions cannot cope, states will try to do so themselves, either unilaterally or in company with like-minded allies. If prevention is strategically necessary and morally justified but legally not permitted, then the existing framework of laws and rules—not preventive military action—is defective. In other words, where for decades countries like India argued that the NPT, although legal, was illegitimate because of the nuclear “apartheid” built into it, can the “good cops” now turn the legality-legitimacy argument on its head?

On the other hand, it has become abundantly clear that unilateral military action outside the UN framework has reinforced the determination of some to pursue the nuclear weapons option. Senior North Korean officials told Siegfried Hecker, a former director of the Los Alamos National Laboratory (1986–1997) that “if Slobodan Milosevic in Serbia, Saddam Hussein in Iraq and Muammar Gaddafi in Libya had had nuclear weapons, their countries would not have been at the mercy of the Americans and their regime-change tactics.”³⁵ Recalling Gaddafi's fate, Iran's Supreme Leader Ayatollah Ali Khamenei similarly said in 2011: “this gentleman wrapped up all his nuclear facilities, packed them on a ship and delivered them to the West and said, ‘Take them!’ . . . Look where we are, and in what position they are now.”³⁶ As Dobey concludes: “The American decision to ‘lead from behind’ in the overthrow of Muammar Qaddafi may haunt for decades efforts to stem the spread of nuclear weapons.”³⁷ The same argument was brought up after the NATO bombing of Serbia in 1999 that defeated and ousted Slobodan Milosevic. At the Third Preparatory Committee (PrepCom) meeting of the NPT 2000 Review Conference in New York in May 1999, “though the Chinese were the only ones publicly to wonder if NATO would have bombed Belgrade if Yugoslavia had also been nuclear armed, there were many in the corridors who made the obvious connection.”³⁸ In India, the same point was made by a former foreign

³⁴ Christopher Clary, *Dr. Khan's Nuclear WalMart*, DISARMAMENT DIPLOMACY 76 (March/April 2004), at 31–35; Douglas Frantz & Catherine Collins, *Those Nuclear Flashpoints Are Made in Pakistan*, WASHINGTON POST, 11 November 2007.

³⁵ Siegfried S. Hecker, *For Iran, a Nuclear Option More Trouble than It Was Worth*, BULLETIN OF THE ATOMIC SCIENTISTS, 18 January 2016, available at <<http://thebulletin.org/iran-nuclear-option-more-trouble-it-was-worth9064>>.

³⁶ Quoted in James Risen, *Seeking Nuclear Insight in Fog of the Ayatollah's Utterances*, N.Y. TIMES, 13 April 2012, available at <<http://www.nytimes.com/2012/04/14/world/middleeast/seeking-nuclear-insight-in-fog-of-the-ayatollahs-utterances.html?mcubz=1>>.

³⁷ William Tobey, *A Message from Tripoli*, part 5, BULLETIN OF THE ATOMIC SCIENTISTS, 8 December 2014, available at <<http://thebulletin.org/message-tripoli-part-5-how-libya-gave-its-wmd7848>>.

³⁸ Rebecca Johnson, NPT Report, 37 DISARMAMENT DIPLOMACY (May 1999), at 16.

secretary³⁹ and a leading newspaper.⁴⁰ Similarly in 2017 North Korean officials said the US airstrikes on Syria in April vindicated their nuclear choices “a million times over.”⁴¹

The fourth anomaly is lumping biological, chemical, and nuclear weapons in one conceptual and policy basket. They differ in their technical features, in the ease with they can be acquired and developed, and in their capacity to cause mass destruction. Nuclear weapons are not so much weapons of mass as of catastrophic destruction. Treating the three classes as one weapons category can distort analysis and produce flawed responses. There is also the danger of mission creep. Justifying nuclear weapons as a useful tool in countering biological and chemical weapons may be one step too far. If nuclear weapons are accepted as having a role to counter biochemical warfare, then how can we deny a nuclear weapons capability to Iran which actually suffered chemical weapons attacks from Saddam Hussein?

The final anomaly concerns the central doctrine underpinning the contemporary Westphalian system, which holds that sovereign states are equal in status and legitimacy. In reality, states are not of equal worth and significance, neither militarily, economically, politically, nor morally. It seems unlikely that in the eyes of most people and countries, nuclear weapons in the hands of Britain and North Korea are equally dangerous.⁴² Similarly, how reasonable or logical is it to lump India, Iran, Israel, North Korea, and Pakistan together, without discriminating between their respective records, yet continue to distinguish between non-proliferation and disarmament? Analyzing the problem from within the conceptual lens of non-proliferation is simply inappropriate. The logical policy implication is either to condemn nuclear weapons for everyone, or to distinguish bad and rogue from responsible behaviour and oppose regimes, not the weapons. But that threatens the core assumption of the NPT, that nuclear weapons are immoral for anyone.

B. Disarmament Failures and NPT Irrelevance

Ignoring the Article VI obligation on disarmament negotiations, the nuclear arsenals of the NS expanded enormously for two decades after the NPT's adoption before warhead numbers began to decline. This despite the fact that the symbiotic link between non-proliferation and disarmament is integral to the NPT. Most countries gave up the weapons option in return for a promise by the NS to engage in good faith negotiations to eliminate nuclear weapons. It was expected that nuclear disarmament could take some time. Accordingly, unlike the non-proliferation obligations, the Article VI disarmament obligation was not brought under international monitoring and enforcement. Exploiting that loophole, not a single country that had nuclear weapons when the NPT was signed in 1968 has given them up.

Yet the logics of nuclear disarmament and non-proliferation are inseparable and the irresponsible and unaccountable behaviour of the NWS fuelled the politics of grievance and resentment. Can the country with the world's most powerful nuclear weapons rightfully use military force to prevent their acquisition by others? From where do the president

³⁹ Muchkund Dubey, *The NATO Juggernaut: Logic of an Indian Defence Deterrent*, TIMES OF INDIA, 8 April 1999.

⁴⁰ TIMES OF INDIA, 2 April 1999.

⁴¹ *Syria Strike 'Vindicates' North Korea's Nuclear Choice*, BBC NEWS, 8 April 2017, available at <<http://www.bbc.com/news/world-asia-39541391>>.

⁴² Thus the conservative columnist Charles Krauthammer: “During the Cold War, we worried about Soviet nukes, but never French or British nukes. Weapons don't kill people; people kill people.” *Detering the Undeterrable*, WASHINGTON POST, 18 April 2008.

and prime minister of nuclear armed France and the United Kingdom derive the moral authority to declare that a nuclear North Korea is unacceptable and must be stopped by force if necessary?

There is a marked contradiction between rhetoric and example. The existence, numbers, and lethality of nuclear weapons have seemingly determined missions, not the other way round. Refining and miniaturizing nuclear weapons, developing new doctrines and justifications for their use, and lowering the threshold for their use weaken the taboo against them and erode the normative barriers to nuclear proliferation. In the words of a former US deputy secretary of defence, “America is sleepwalking through history, armed with nuclear weapons. The Cold War left us with a massive inventory of weapons we no longer need, an infrastructure we can no longer use or maintain, and no thought of where our future lies.”⁴³

Nuclear arms control is at an impasse and disarmament could be reversed. United Nations Secretary-General Kofi Annan noted in 2005 that the NPT “faces a crisis of confidence and compliance born of a growing strain on verification and enforcement.”⁴⁴ A quartet of American national security heavyweights cautioned a decade ago that “[t]he accelerating spread of nuclear weapons, nuclear know-how and nuclear material has brought us to a nuclear tipping point.”⁴⁵

These anxieties are hardly allayed by multilateral action. The global governance mechanisms for non-proliferation and disarmament are in a sorry state. The Conference on Disarmament (CD), the world’s standing multilateral disarmament machinery, has been immobilized, unable even to agree on a work program for two decades. The UN reform summit in 2005 failed to include a single sentence on the hot subject. Annan argued that the unique status of the NWS “also entails a unique responsibility” and they must do more, including further and irreversible reductions in non-strategic nuclear arsenals, reaffirmation of negative security assurances, swift negotiation of a fissile materials cut-off treaty (FMCT), and the maintenance of the moratorium on nuclear testing until the entry into force of the CTBT. He strongly urged states to agree on these measures at the 2005 NPT Review Conference.⁴⁶

In the end, the 2005 NPT Review Conference ended in complete collapse. It failed to address the vital challenges or offer practical ideas for preventing the use, acquisition, and spread of nuclear weapons. The first half of the conference was dogged by procedural wrangling, while the second half was equally rancorous. Washington, which has historically led international efforts to reinforce the NPT regime, faulted the international community, yet again, for failure to confront the reality of the threat of proliferation by countries like Iran and North Korea. Arms control advocates countered that the US delegation had come intent on focusing on the proliferation side of the equation and was totally intransigent with regard to previously agreed-to commitments on arms control and disarmament measures by the existing nuclear powers. In an echo of communist systems, the information booklet produced by the US government during the conference blanked out milestones no longer popular with the George W. Bush administration, including the 1996 CTBT and the 2000 NPT Review Conference. Joseph Cirincione commented that “official disdain for these

⁴³ John J. Hamre, *Toward a Nuclear Strategy*, WASHINGTON POST, 2 May 2005.

⁴⁴ Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All* (New York: United Nations, document A/59/2005, 21 March 2005), para. 97.

⁴⁵ George P. Shultz, William J. Perry, Henry A. Kissinger & Sam Nunn, *Toward a nuclear free world*, WALL STREET JOURNAL, 15 January 2008.

⁴⁶ Annan, *supra* note 44, paras. 97–100.

agreements seems to have turned into denial that they existed.”⁴⁷ The 2005 world summit similarly failed to come to any agreement on non-proliferation and disarmament. One diplomat remarked that Washington refused to accept the “logical premise” that it must engage in disarmament if it wants to discourage a “new nuclear arms race.”⁴⁸

If we fast forward to 2017, the communiqué issued at the conclusion of the G20 summit in Hamburg in July similarly did not mention the word “nuclear” even once,⁴⁹ despite the acute tensions over North Korea’s rapidly advancing nuclear weapons program. “The rising tension over North Korea’s missile program drove a flurry of Asia-centric diplomacy as the U.S., China, Russia, South Korea, India and Japan explored their options in closed bilateral sessions,”⁵⁰ confirming that the epicentre of diplomatic efforts to contain nuclear threats and reduce nuclear risks is bilateral discussions and not multilateralism, even if the former are held on the sidelines of the latter.

A major evaluation of the implementation record of the agreed action agenda from the 2010 NPT Review Conference—the one with an agreed outcome compared to the failures of 2005 and 2015—documented that with respect to peaceful uses of nuclear energy and non-proliferation, where 50 per cent and 33 per cent of recommendations had shown significant or maximum progress respectively, with nuclear disarmament the figure was a more miserly 17 per cent. Conversely, zero, 17 per cent, and 62 per cent, respectively, of the three sub-categories of recommendations had a record of minimal or nil progress.⁵¹ In other words, nuclear disarmament—which, as the NWS and umbrella states repeatedly reminded the world in 2016–2017 can only be implemented by those who possess nuclear weapons—has been the very poor cousin of non-proliferation and peaceful uses of nuclear energy in the promise–performance record of agreed NPT outcomes. The study’s overall conclusion on the Article VI commitment of the NWS was pretty damning: “Based on current arsenals, deployments and force postures, and on planned expansions, upgrades and modernization, every one of them is committed to the indefinite retention of significant nuclear-weapon capability.”⁵²

On the other side, the NWS insist they have acted in good faith consistent with the NPT Article VI disarmament obligation through unilateral decisions and bilateral agreements to reduce the numbers of nuclear warheads globally by 80 per cent from the Cold War peak. France and Russia also point to the Article VI linkage to general and complete disarmament, although it may be argued that the normative force of this linkage has been broken over the successive review conferences.⁵³ Chris Ford goes further in arguing that the vague and weak disarmament obligations of the NPT compared to the stringent, immediate, legally

⁴⁷ Joseph Cirincione, *US ‘Rewrites History’ of Arms-Control Deals in Conference Brochure*, JAPAN TIMES, 26 May 2005.

⁴⁸ Mark Townsend, *Summit Failure Blamed on US*, OBSERVER, 18 September 2005.

⁴⁹ *G20 Leaders Declaration: Shaping an Interconnected World*, Hamburg, 7/8 July 2017, available at <<https://www.g20.org/gipfeldokumente/G20-leaders-declaration.pdf>>.

⁵⁰ Walter Russell Mead, *The G-20: Another Vacuous Meet-and-Greet*, WALL STREET JOURNAL, 10 July 2017, available at <<https://www.wsj.com/articles/the-g-20-another-vacuous-meet-and-greet-1499726987>>.

⁵¹ Gareth Evans, Tanya Ogilvie-White, and Ramesh Thakur, *Nuclear Weapons: The State of Play 2015* (Canberra: Centre for Nuclear Non-Proliferation and Disarmament, 2015), at 251–261; available at <<https://cnnd.crawford.anu.edu.au/publication/cnnd/5328/nuclear-weapons-state-play-2015>>.

⁵² *Id.*, at 13, para. 1.33.

⁵³ Paul Meyer, *Hard and Soft Linkages Between Nuclear and Conventional Disarmament*, in *RETHINKING GENERAL AND COMPLETE DISARMAMENT IN THE TWENTY-FIRST CENTURY*, UNODA Occasional Paper, No. 28 (New York: United Nations, 2016).

binding, and internationally verifiable and enforceable non-proliferation clauses confirm that the treaty's real purpose was the latter and disarmament was merely a political sop.⁵⁴

C. Indefinite Extension of the NPT

In retrospect, the present global divide has its roots in the decision of the NPT Review and Extension Conference (NPTREC) in 1995 to extend the treaty indefinitely. The price of gaining unanimous support for the indefinite extension was a four-part package.⁵⁵ Two further key multilateral agreements were called for, a CTBT and an FMCT. The CTBT was negotiated in 1996 but is yet to enter into force owing to the stringent requirement that all forty-four states with nuclear capabilities listed in Annex 2 must be states parties for it to do so.⁵⁶ Eight states are yet to fulfil this condition, including China, India, Israel, North Korea, Pakistan, and the United States. Negotiations on an FMCT are yet to commence. Second, the strengthened review process has not quite worked out as envisaged as the PrepComs have failed to agree on substantive recommendations for respective review conferences owing to significant political differences between states parties.⁵⁷ Third, efforts to convene a conference in 2012 on a Middle East WMD-free zone stalled in the face of growing regional instability, the absence of agreement on the conference aims, and the none too subtle efforts by some Arab states to instrumentalize the zone proposal into a tool to disarm Israel of nuclear weapons, when all previous NWFZ have been non-proliferation instruments.⁵⁸

Thus not one of the three other elements of the NPTREC package has been realized. The only element that survives intact is the treaty's indefinite extension itself. With the benefit of hindsight, some states have undoubtedly experienced buyer's remorse at having surrendered the only leverage they had over the nuclear policies of the NWS. Unhappiness at the non-implementation of the 1995 package deepens the dissatisfaction with the perceived lopsided history of the fulfilment of the NPT grand bargain between nuclear non-proliferation and disarmament.

D. Close Calls

The nuclear peace has held so far owing as much to good luck as sound stewardship under the NPT as the global nuclear normative framework. The policies of the nuclear-armed states leave the world exposed to the risk of sleepwalking into a nuclear disaster, remembering that those walking in their sleep are not aware of it at the time. The number of times that we

⁵⁴ Christopher A. Ford, *Debating Disarmament: Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons*, 14 *NONPROLIFERATION REVIEW* 401–428 (2007). In 2017 Ford was appointed to a senior position in the Trump administration.

⁵⁵ Jayantha Dhanapala (NPTREC president) with Randy Rydell, *Multilateral Diplomacy and the NPT: An Insider's Account* (Geneva: United Nations Institute for Disarmament Research and the Stockholm International Peace Research Institute, 2005), at 50.

⁵⁶ The formula is unique among arms control treaties entry-into-force provisions. As such it must have been a deliberate departure from existing precedents. An obvious question at the time was: what if such a formula had applied to other treaties? The immediate answer is that not one would have been in force, including the NPT itself. This in turn raises the suspicion that the CTBT entry-into-force formula was intentionally crafted to frustrate or at least greatly delay its entry into force.

⁵⁷ Tariq Rauf, *Preparing for the 2017 NPT Preparatory Committee Session: The Enhanced Strengthened Review Process* (Stockholm: SIPRI Brief, 25 February 2017), available at <http://www.non-proliferation.org/wp-content/uploads/2017/04/NPT2017_25FEB_RAUF_PrepCom.pdf>.

⁵⁸ See *NUCLEAR WEAPONS-FREE ZONES* (Ramesh Thakur ed., 1998).

have come frighteningly close to nuclear holocaust is simply shocking.⁵⁹ The most graphic and best known example is the 1962 Cuban missile crisis. The US strategy was based on the best available intelligence which indicated that there were no nuclear warheads in Cuba. In fact there were 162 warheads already stationed there, and the local Soviet commander had taken them out of storage to deployed positions for use against an American invasion.⁶⁰ In March 2015, US veterans revealed how on 28 October 1962, while stationed at a missile launch base in Okinawa, they received a coded order to launch missiles and carried out the required three-level confirmation process. But not all of the four missiles were targeted at Russia, which made the crew suspicious and further clarifications confirmed that the order was a mistake.⁶¹ Following that alarm, Latin American countries negotiated a NWFZ treaty, adopted it in 1967 and the Treaty of Tlatelolco entered into force on 22 April 1968. That is, shocked into the reality of the dangers of a nuclear war, a whole continent denuclearized itself three months before the NPT was adopted and nearly two years before its entry into force.

In November 1983, in response to NATO war games exercise Able Archer, which Moscow mistook to be real, the Soviets came close to launching a full-scale nuclear attack against the West.⁶² On 25 January 1995, Norway launched a scientific research rocket in its northern latitude. Because of the speed and trajectory of the powerful rocket, whose stage three mimicked a Trident submarine-launched ballistic missile (SLBM), within seconds of launch the Russian early warning radar system near Murmansk tagged it as a possible US nuclear missile attack. Fortunately there was no system malfunction, the rocket did not stray into Russian airspace, and the alert was soon over.⁶³ On 29 August 2007, a B-52 bomber carrying six air-launched cruise missiles armed with nuclear warheads made an unauthorized 2,200 km flight from North Dakota to Louisiana. Because they were not missed, their whereabouts were unknown for thirty-six hours.⁶⁴

Following the Ukraine crisis, in the one-year period March 2014 to 2015, one study documented sixty-seven specific incidents—including thirteen “serious” of which five were “high risk.”⁶⁵ In a 2016 study, Global Zero analyzed forty military encounters around disputed islands in the South China Sea, which brought confrontations and near-misses between Chinese forces and those of the United States or its regional allies. Ten of these incidents were assessed as provocative. In South Asia, the study listed fifty-four significant

⁵⁹ See ERIC SCHLOSSER, *COMMAND AND CONTROL* (2013); and PATRICIA LEWIS, HEATHER WILLIAMS, BENOIT PELOPIDAS & SASAN AGHLANI, *TOO CLOSE FOR COMFORT* (2013).

⁶⁰ Robert McNamara, *The Conference on Disarmament Should Focus on Steps to Move Toward a ‘Nuclear Free World’*, *DISARMAMENT DIPLOMACY*, No. 4 (April 1996).

⁶¹ Aaron Tovish, *The Okinawa Missiles of October*, *BULLETIN OF THE ATOMIC SCIENTISTS*, 25 October 2015, available at <<https://thebulletin.org/okinawa-missiles-october8826>>.

⁶² Nate Jones, *Countdown to Declassification: Finding Answers to a 1983 Nuclear War Scare*, 69 *BULLETIN OF THE ATOMIC SCIENTISTS* 47–57 (2013).

⁶³ Tom Loftus (US ambassador to Norway, 1993–1998), *The Day the Russian Early Warning System Signalled a U.S. Nuclear Attack*, *THE CAP TIMES*, 28 January 2015, available at <http://host.madison.com/news/opinion/column/ambassador-tom-loftus-the-day-the-russian-early-warning-system/article_9efc05e6-dacf-5587-9913-13f3e9c950ac.html>.

⁶⁴ For an editorial on the incident, see *The Wake-Up Flight of a Wayward B-52*, *N.Y. TIMES*, 15 February 2008.

⁶⁵ THOMAS FREAR, ŁUKASZ KULESA & IAN KEARNS, *DANGEROUS BRINKMANSHIP: CLOSE MILITARY ENCOUNTERS BETWEEN RUSSIA AND THE WEST IN 2014* (European Leadership Network Policy Brief, November 2014). There were two near collisions of civilian and Russian surveillance planes; an abduction of Estonian intelligence officer; the large-scale hunt for a foreign submarine in Swedish waters; and Russian fighter-bombers using NATO ships as targets in training.

military incidents between China, India, and Pakistan.⁶⁶ As for near-miss in an accident, in January 1961, a 4MT bomb (that is, 260 times more powerful than Hiroshima) was just one ordinary switch away from detonating over North Carolina—whose effects would have covered Washington, Baltimore, Philadelphia, and even New York City—when a B-52 bomber on a routine flight went into an uncontrolled spin.⁶⁷

This selective catalogue of misperceptions, miscalculations, near-misses, and accidents underlines the message of successive international commissions—the Canberra Commission, Tokyo Forum, Blix Commission, the International Commission on Nuclear Non-Proliferation and Disarmament. As long as any state has nuclear weapons, others will want them. As long as they exist, they will be used again some day, if not by design and intent, then through miscalculation, accident, rogue launch, or system malfunction. Any such use anywhere could spell catastrophe for the planet. The only guarantee of zero nuclear weapons risk is to move to zero nuclear weapons possession by a carefully managed process. Proponents of nuclear weapons are the real “nuclear romantics” who exaggerate the bombs’ significance, downplay their substantial risks, and imbue them with “quasi-magical powers” also known as nuclear deterrence.⁶⁸ The claim that nuclear weapons could not proliferate if they did not exist is both an empirical and a logical truth. The very fact of their existence in the arsenals of nine countries is *sufficient guarantee* of their proliferation to others and, some day again, use. Conversely, nuclear disarmament is a *necessary condition* of nuclear non-proliferation. If we want non-proliferation, therefore, we must prepare actively for disarmament.

IV. THE SECOND NUCLEAR AGE

Reflecting on the half-century of experience under the NPT global nuclear order, five paradoxes set the context for the nuclear arms control agenda and are at the heart of the NPT–NWPT divide. First, nuclear weapons are useful for deterrence only if the threat to use them is credible, but they must never be used if deterrence fails, because any use will only worsen the devastation for everyone. Second, they are useful for some (those who have them) for guaranteeing nuclear peace and as a strong disincentive against any war for fear of nuclear escalation. But illogically, they must be stopped from spreading to anyone else. If nuclear weapons truly confer such benefits, the countries most at risk of warfare should be strongly encouraged to get the bomb. Third, the most substantial progress so far on dismantlement and destruction of nuclear weapons has occurred as a result of bilateral US and Soviet/Russian treaties, agreements, and measures. But a nuclear-weapon-free world will have to rest on a legally binding multilateral international instrument such as a universal, non-discriminatory NWC. Fourth, the existing treaty-based regimes have collectively anchored international security and can be credited with many major successes and significant accomplishments but, as argued above, some of them may have reached the limits of their success. Fifth and finally, there are far fewer nuclear weapons today than during the Cold War, the risk of a deliberate nuclear war being started between the United

⁶⁶ *Nuclear Weapons Countries: Military Incidents: March 2014–November 2015* (Global Zero, 2016), available at <http://www.globalzero.org/files/military_incidents_updated_12.14.15v2.pdf>.

⁶⁷ Ed Pilkington, *US Nearly Detonated Atomic Bomb over North Carolina—Secret Document*, GUARDIAN, 21 September 2013.

⁶⁸ Ward Wilson, *How Nuclear Realists Falsely Frame the Nuclear Weapons Debate*, BULLETIN OF THE ATOMIC SCIENTISTS, 7 May 2015, available at <<http://thebulletin.org/how-nuclear-realists-falsely-frame-nuclear-weapons-debate8306>>.

States and Russia is very low, and they play a much lesser role in shaping relations between Moscow and Washington.⁶⁹ Yet the risks of nuclear war have grown with their spread to more countries and also because command and control systems in even the most sophisticated nuclear-armed states remain vulnerable to human error, system malfunction and, increasingly, cyber attack. In the ultimate irony, the world could end with a nuclear war launched by blips on the radar screen.

Owing to the significant structural differences, analysts distinguish between the first and second nuclear age.⁷⁰ The first nuclear age was shaped by the overarching ideological rivalry of the bipolar Cold War protagonists, the competitive nuclear arms buildup and doctrines of the two superpowers, and the development of relatively robust mechanisms for maintaining strategic stability. The second nuclear age is characterized by a multiplicity of nuclear powers with criss-crossing ties of cooperation and conflict, the fragility of command and control systems, threat perceptions between three or more nuclear-armed states simultaneously, and the resulting greater complexity of deterrence relations between the nine nuclear-armed states. Changes in the nuclear posture of one can generate a cascading effect on several others. For example the nuclear relationship between India and Pakistan is historically, conceptually, politically, strategically, and operationally intertwined with China as a nuclear power. The boundaries between nuclear and conventional weapons, tactical and strategic warheads, and nuclear, cyber, and space domains are eroding. And the Russia–United States consensus on limiting missile defence appears to have dissolved, starting with the 1972 Anti-Ballistic Missile (ABM) Treaty that was discarded by President George W. Bush in 2002.⁷¹

A. Elevated Risks

During the NPT's lifetime the peaceful applications of nuclear energy have blossomed in many fields with required safeguards operated by the IAEA as well as suppliers of sensitive nuclear technology, equipment, and materials. The number of countries with nuclear weapons has expanded from the original NS, but only by four: India, Israel, North Korea, and Pakistan. But disarmament as the third plank of the NPT is no closer to realization today than it was half a century ago.

All nine nuclear-armed states pay lip-service to the ultimate elimination of nuclear weapons but their actions demonstrate the intent to retain nuclear weapons indefinitely. In fifty years since the NPT's adoption, not a single nuclear warhead has been eliminated through a multilateral agreement. In addition, the bilateral US–Russia process had also stalled and was in serious risk of being reversed. Russia's respected nuclear policy expert Alexei Arbatov wonders if nuclear arms control has reached its own end of history. On the

⁶⁹ However, the flare-up of geopolitical tensions over Ukraine in 2014 heightened the danger of an unintended nuclear war: Robert E. Berls & Leon Ratz, *Rising Nuclear Dangers: Assessing the Risk of Nuclear Use in the Euro-Atlantic Region*, NTI PAPER (Washington DC: Nuclear Threat Initiative, October 2015), available at <http://www.nti.org/media/pdfs/NTI_Rising_Nuclear_Dangers_Paper_FINAL.pdf?_1443443566>.

⁷⁰ PAUL BRACKEN, *THE SECOND NUCLEAR AGE: STRATEGY, DANGER, AND THE NEW POWER POLITICS* (2012); TOSHI YOSHIHARA & JAMES R. HOLMES EDS., *STRATEGY IN THE SECOND NUCLEAR AGE: POWER, AMBITION, AND THE ULTIMATE WEAPON* (2012); Gregory D. Koblentz, *Strategic Stability in the Second Nuclear Age* (Council on Foreign Relations, Special Report No. 71, November 2014).

⁷¹ Arms Control Association, *The Anti-Ballistic Missile (ABM) Treaty at a Glance*, August 2012, available at <<https://www.armscontrol.org/factsheets/abmtreaty>>.

one hand, almost all negotiations on nuclear arms reductions and non-proliferation have stalled. On the other hand, non-proliferation norms are softening, “existing treaty regimes are eroding and . . . may collapse in the near future.” With “the total disintegration of the existing framework of treaties and regimes,”⁷² he warns, the risks of and plans for the use of nuclear weapons in combat will return to prominence. US President Donald Trump’s refusal in October 2017 to recertify the 2015 Iran nuclear deal adds to the nuclear risks.⁷³

The two world leaders who deserve the most credit for the unexpected end of the Cold War were Ronald Reagan of the United States and Mikhail Gorbachev of the then-Soviet Union. Even more unexpected were the deep cuts in the two military superpowers’ nuclear arsenals instituted by the two visionary leaders. Their gains now are at serious risk of significant reverses. In a recent article, Gorbachev noted that December 2017 marks thirty years since the signing of the Intermediate Range Nuclear Forces (INF) Treaty. This initiated the process of additional unilateral actions and bilateral agreements on nuclear arms control that resulted in an 80 per cent cut to the two countries’ nuclear stockpiles from the Cold War peak. Now the INF is in danger of being scrapped as Moscow and Washington accuse each other of violations of the letter and spirit of the treaty. Gorbachev notes that although outsiders lack access to the facts to evaluate the competing claims, what is indisputable is that the technical issues in contention reflect the deterioration in the larger political relations.⁷⁴

For nuclear peace to hold, deterrence and fail-safe mechanisms must work every single time. For nuclear Armageddon, deterrence or fail safe mechanisms need to break down only once. This is not a comforting equation. It also explains why, unlike most situations where risk can be mitigated after disaster strikes, with nuclear weapons all risks must be mitigated before any disaster.⁷⁵ Deterrence stability depends on rational decision-makers being always in office on all sides: a dubious and not very reassuring precondition. The world could survive on the edge of disaster with one erratic and volatile leader like Kim Jong-un with his finger on the nuclear button, but the presence of two such leaders in Pyongyang and Washington dramatically increases the risk of nuclear disaster. Thus what previously were concerns of nuclear specialists, have become a global public nightmare with the election of Trump as US president.

In December 2016, the Defense Science Board urged president-elect Trump to consider acquiring a greater number of lower-yield weapons that could provide a “tailored nuclear option for limited use.”⁷⁶ Senator Dianne Feinstein rightly responded that there is no such thing as a limited nuclear war.⁷⁷ In a tweet on 22 December, Trump promised to

⁷² ALEXEI ARBATOV, *AN UNNOTICED CRISIS: THE END OF HISTORY FOR NUCLEAR ARMS CONTROL?* (2015), at 3 and 22; available at <http://carnegieendowment.org/files/CP_Arbatov2015_n_web_Eng.pdf>.

⁷³ See Ramesh Thakur, *Trump May Have Just Relit the Iran Nuclear Fuse*, THE STRATEGIST, 17 October 2017, available at <<https://www.aspistrategist.org.au/trump-may-have-just-relit-the-iran-nuclear-fuse/>>.

⁷⁴ Mikhail Gorbachev, *My Plea to the Presidents of Russia and the United States*, WASHINGTON POST, 11 October 2017, available at <https://www.washingtonpost.com/opinions/mikhail-gorbachev-my-plea-to-the-presidents-of-russia-and-the-united-states/2017/10/10/36225a60-ade2-11e7-a908-a3470754bbb9_story.html?hpid=hp_hp-top-table-main-gorbachev%3Ahomepage%2Fstory&hpid=hp_hp-top-table-main-gorbachev%3Ahomepage%2Fstory>.

⁷⁵ Martin E. Hellman, *How Risky Is Nuclear Optimism?*, 67 BULLETIN OF THE ATOMIC SCIENTISTS 47–56 (2011).

⁷⁶ Charles J. Carrigan, *Board Backs Off Lower-yield Nukes*, ARMS CONTROL ASSOCIATION, April 2017, available at <<https://www.armscontrol.org/act/2017-04/news/board-backs-lower-yield-nukes>>.

⁷⁷ Dianne Feinstein, *There’s no such thing as ‘limited’ nuclear war*, WASHINGTON POST, 3 March 2017, available at <https://www.washingtonpost.com/opinions/theres-no-such-thing-as-limited-nuclear-war/2017/03/03/faef0de2-fd1c-11e6-8f41-ea6ed597e4ca_story.html?utm_term=.3fce85142b1e>.

“greatly strengthen and expand [US] nuclear capability.”⁷⁸ In February President Trump insisted that the United States would stay at the “top of the [nuclear] pack.”⁷⁹ The same day Russia’s President Vladimir Putin also spoke of the need to do the same with Russia’s deterrent.⁸⁰ A day later Trump said, “Let it be an arms race . . . we will outmatch them at every pass and outlast them all.”⁸¹ On 2 August, Air Force General Paul Selva, Vice Chairman of the Joint Chiefs of Staff, said that the future of nuclear deterrence lies in smaller, low-yield nuclear weapons that the United States might actually use, so that a nuclear attack could be launched on an adversary without ending the world or causing massive indiscriminate casualties.⁸²

Within months of taking office, Trump saw his own popularity and global US reputation decline steeply. In a thirty-seven-country survey of 40,448 people, only 22 per cent had confidence that Trump would do the right thing in international affairs, down from 64 per cent during Barack Obama’s final years in office.⁸³ The fall in confidence was especially pronounced among close allies in Asia (including a 55-point fall among Australians) and Europe, and immediate neighbours Canada (–61) and Mexico (–44). Global publics dislike, distrust, and disrespect Trump. They judged both his policies and character harshly: he “is arrogant [75 per cent], intolerant [65 per cent] and even dangerous [62 per cent].” Only 26 per cent believe he is qualified to be US president. Favourable views of the United States fell from 64 per cent to 49 per cent. Apparently it was in the context of Trump’s failure to grasp the elementary elements of nuclear policy and strategy that on 20 July Secretary of State Rex Tillerson called him a “f . . . ing moron.”⁸⁴ And Senator Bob Corker, the Republican chairman of the Senate Foreign Relations Committee, warned that Trump could put the United States “on the path to World War Three.”⁸⁵

On 26 January 2017, the Science and Security Board of the *Bulletin of the Atomic Scientists* decided to move the Doomsday Clock thirty seconds closer to doomsday at two-and-a-half minutes to midnight—the closest to midnight since 1953. The explanation given for the darkened global security landscape included the international community’s failure to come

⁷⁸ <<https://twitter.com/realDonaldTrump/status/811977223326625792>>.

⁷⁹ In a Reuters interview; Steve Holland, *Trump Wants to Make Sure U.S. Nuclear Arsenal at ‘Top Of Pack’*, REUTERS, 24 February 2017, available at <<http://www.reuters.com/article/us-usa-trump-exclusive-idUSKBN1622IF>>.

⁸⁰ David Smith, *Trump Calls on US to ‘Greatly Strengthen and Expand’ Nuclear Weapons Capability*, GUARDIAN, 23 December 2016, available at <<https://www.theguardian.com/us-news/2016/dec/22/donald-trump-tweets-expand-nuclear-weapons>>.

⁸¹ Ed Pilkington & Martin Pengelly, *‘Let It Be An Arms Race’: Donald Trump Appears to Double Down on Nuclear Expansion*, GUARDIAN, 24 December 2016, available at <<https://www.theguardian.com/us-news/2016/dec/23/donald-trump-nuclear-weapons-arms-race>>.

⁸² Patrick Tucker, *US Military Eyes New Mini-Nukes for 21st-Century Deterrence*, DEFENSE ONE, 3 August 2017, available at <<http://www.defenseone.com/technology/2017/08/us-military-eyes-new-mini-nukes-21st-century-deterrence/139997/>>.

⁸³ Richard Wike, Bruce Stokes, Jacob Poushter & Janell Fetterolf, *U.S. Image Suffers as Publics Around World Question Trump’s Leadership*, PEW RESEARCH CENTER, 26 June 2017, available at <<http://www.pewglobal.org/2017/06/26/u-s-image-suffers-as-publics-around-world-question-trumps-leadership/>>.

⁸⁴ Fred Kaplan, *Trump’s Nuclear Meltdown*, SLATE, 11 October 2017, available at <http://www.slate.com/articles/news_and_politics/war_stories/2017/10/now_we_know_why_rex_tillerson_called_donald_trump_a_moron.html>.

⁸⁵ *Bob Corker: Trump Puts US on Course for ‘World War Three’*, BBC NEWS, 9 October 2017, available at <<http://www.bbc.com/news/world-us-canada-41556537>>.

to effective grip with nuclear weapons as an existential threat. Russia and the United States, with more than 90 per cent of global nuclear stockpiles, were engaged in a wide-ranging modernization of their nuclear forces, had disengaged from any serious nuclear arms control negotiations, and confronted one another in several conflict theatres. So did India and Pakistan across the divided Kashmir boundary while North Korea conducted two more nuclear tests in 2016. A worldwide rise in strident nationalism included “disturbing” and “ill-considered” statements from the newly-installed US president on the use and proliferation of nuclear weapons and there seemed to be a general loss of public confidence in the capacity of democratic institutions to address critical threats.⁸⁶ It will be interesting to see the clock’s movement in 2018.

On 30 May 2017, the Pentagon for the first time successfully intercepted a mock inter-continental ballistic missile (ICBM) using a ground-based program in which a radar detects an incoming missile and launches an interceptor missile to collide with and destroy the enemy missile. While superficially attractive in offering an additional layer of protection of American cities against nuclear-tipped enemy ICBMs, this contravenes the historical lesson that successful arms control was built not just on controlling offensive weapons systems, but equally on reciprocal restraints on developing effective defensive weapons systems. The advances in US anti-missile defences will almost certainly stimulate a new nuclear arms race with China and Russia.

Under presidents Putin in Russia and Trump in the United States, the visibility of nuclear weapons and their roles in national security doctrines have seemingly been revalidated. The perceived character and leadership flaws of leaders like Vladimir Putin, Kim Jong-un, and Donald Trump increase global anxiety about world peace being held hostage to their instincts and judgment. Their quality of nuclear decision-making adds urgency to the search for a peace without rather than through nuclear weapons.

In addition, increasing attention is being paid to the possibility of nuclear weaponization by Japan and South Korea in the Pacific,⁸⁷ and to an independent European nuclear deterrent in the Atlantic. In a *New York Times* interview, Trump seemed to suggest Japan and South Korea could obtain their own nuclear arsenals.⁸⁸ The strategically-challenged president’s unpredictability and unreliability, combined with his open scepticism about the value of NATO to the United States, awakened interest in limited but serious European circles on an independent nuclear deterrent for the continent. The possibility was raised by Roderich Kiesewetter, a parliamentarian and spokesman for Germany’s ruling party, shortly after Trump’s election in 2016, and repeated by Poland’s former Prime Minister Jaroslaw Kaczynski in February 2017.⁸⁹ A review commissioned by parliament concluded that Germany can legally finance British or French nuclear weapon programs in return for

⁸⁶ 2017 Doomsday Clock Statement, BULLETIN OF THE ATOMIC SCIENTISTS, 26 January 2017, available at <<http://thebulletin.org/sites/default/files/Final%202017%20Clock%20Statement.pdf>>.

⁸⁷ Abe Cabinet Says Article 9 Does Not Ban Possessing, Using N-Weapons, ASAHI SHIMBUN, 2 April 2016, available at <<http://www.asahi.com/ajw/articles/AJ201604020026.html>>; Henry Sokolski, Japan and South Korea May Soon Go Nuclear, WALL STREET JOURNAL, 8 May 2016, available at <<http://www.wsj.com/articles/japan-and-south-korea-may-soon-go-nuclear-1462738914>>.

⁸⁸ Melissa Chan, Here’s What Donald Trump Has Said About Nuclear Weapons, N.Y. TIMES, 3 August 2016, available at <<http://time.com/4437089/donald-trump-nuclear-weapons-nukes/>>.

⁸⁹ Max Fisher, Fearing U.S. Withdrawal, Europe Considers Its Own Nuclear Deterrent, N.Y. TIMES, 6 March 2017, available at <<https://www.nytimes.com/2017/03/06/world/europe/european-union-nuclear-weapons.html>>.

their protection.⁹⁰ All such developments are not just greatly worrying; they also imply a rejection of the NPT as the globally legitimate framework for regulating nuclear policy.

In yet another demonstration that the NPT is no longer fit for purpose in containing current nuclear threats, in 2017 North Korea made rapid strides in developing the capability to launch ICBMs. In August a fresh assessment by US intelligence agencies concluded that its nuclear arsenal had increased to up to sixty warheads, and it had also mastered the technology to miniaturize warheads in order to fit them in the nosecone of the ICBMs.⁹¹ In August Trump exchanged an escalating series of incendiary threats and counter-threats with Kim Jong-un using words like “fire and fury” and military “solutions” that are “fully in place, locked and loaded.” He left many world leaders uneasy and earned an exhortation from Beijing to avoid words and deeds that can exacerbate the situation.⁹² For his part, Russia’s president argued that “the situation is balancing on the brink of a large-scale conflict . . . The region’s problems should only be settled through a direct dialogue of all the parties concerned without any preconditions. Provocations, pressure and militarist and insulting rhetoric are a dead-end road.”⁹³

On 3 September, on the eve of the annual BRICS (Brazil, Russia, India, China, South Africa) summit in Xiamen in China, North Korea conducted a powerful 100–160kt test of a hydrogen bomb in a brazen show of defiance of the international community. The annual opening of the UN General Assembly witnessed an extraordinary exchange of threats, counter-threats, and schoolyard taunts. Trump mocked Kim Jong-un as “Rocket Man” and described Iran’s government as “a murderous regime.”⁹⁴ In response President Hasan Rouhani condemned Trump’s address as hate speech,⁹⁵ while Kim derided Trump as “a mentally deranged dotard.”⁹⁶ Russia’s Foreign Minister Sergei Lavrov called for calm in this “kindergarten fight between children.”⁹⁷

B. Asia’s Contours in the Global Nuclear Landscape

Of all the continents, only Asia contains states with the full spectrum of nuclear weapon status in relation to the NPT: one NPT-licit NWS (China), two non-NPT nuclear-armed

⁹⁰ Max Fisher, *European Nuclear Weapons Program Would Be Legal, German Review Finds*, N.Y. TIMES, 5 July 2017, available at <<https://www.nytimes.com/2017/07/05/world/europe/germany-nuclear-weapons.html>>.

⁹¹ Joby Warrick, Ellen Nakashima & Anna Fifield, *North Korea Now Making Missile-Ready Nuclear Weapons, U.S. Analysts Say*, WASHINGTON POST, 8 August 2017, available at <https://www.washingtonpost.com/world/national-security/north-korea-now-making-missile-ready-nuclear-weapons-us-analysts-say/2017/08/08/e14b882a-7b6b-11e7-9d08-b79f191668ed_story.html>.

⁹² Katrina Manson, *Trump Steps Up Korean War of Words*, FINANCIAL TIMES, 12 August 2017.

⁹³ Vladimir Putin, *BRICS: Towards New Horizons of Strategic Partnership*, TIMES OF INDIA, 1 September 2017, available at <<http://blogs.timesofindia.indiatimes.com/toi-edit-page/brics-towards-new-horizons-of-strategic-partnership/>>.

⁹⁴ *Remarks by President Trump to the 72nd Session of the United Nations General Assembly*, 19 September 2017, available at <<https://www.whitehouse.gov/the-press-office/2017/09/19/remarks-president-trump-72nd-session-united-nations-general-assembly>>.

⁹⁵ Julian Borger & Philip Oltermann, *Tillerson Says Iran Is Not Meeting ‘Expectations’ of Nuclear Deal*, GUARDIAN, 21 September 2017, available at <<https://www.theguardian.com/world/2017/sep/20/iran-president-rouhani-trump-speech-un>>.

⁹⁶ *North Korea: Trump and Kim Call Each Other Mad*, BBC NEWS, 22 September 2017, available at <<http://www.bbc.com/news/world-asia-41356836>>.

⁹⁷ *Id.*

states (India, Pakistan), the world's only NPT defector state (North Korea), three umbrella states (Australia, Japan, South Korea), and a vast majority of non-NWS states parties. North Korea's unchecked nuclear ambitions could in turn trigger a cascade of proliferation right through the sub-region (South Korea, Japan, Taiwan), with the sole exception of Mongolia which like New Zealand has enshrined its nuclear-free status in national legislation.⁹⁸ China is also the sole Asian permanent member of the UNSC which functions as the global enforcement authority in the maintenance of nuclear peace.

The CTBT, signed by 183 countries and ratified by 166, is a key barrier to both vertical and horizontal proliferation. This still leaves eight out of forty-four Annex 2 countries whose ratifications are needed to bring it into force. Four holdouts are Asian: China, India, North Korea, and Pakistan. Since the treaty's adoption in 1996, the handful of nuclear tests have all been in Asia: five by India in 1998, six by Pakistan in 1998, and six by North Korea between 2006 and 2017. North Korea is the only country where nuclear weapon tests are still being conducted. Meanwhile Pakistan has consistently blocked the adoption of any program of work in the CD in Geneva on an FMCT.

The Korean Peninsula offers the most vivid proof that all the nuclear risks and threats that exist globally are also present in Asia, and in some cases are more acute in this part of the world than elsewhere.⁹⁹ Asia is the world's only site, and Japan the only victim, of the use of nuclear weapons in war. Four of the world's nine nuclear weapon possessor countries, plus three umbrella states that depend for their national security on US nuclear weapons, are in Asia. Russia and the United States also have a massive geographical footprint each in the Pacific. Asia is the only continent where nuclear stockpiles are growing. Even though their combined stockpiles total only 3 per cent of global nuclear arsenals, warhead numbers are growing in all four Asian nuclear-armed states.

Asian states hold asymmetric perceptions of the military and political utility of nuclear weapons, with China and India having declared no-first-use (NFU) policies because they foresee political more than military utility in nuclear weapons. Asia is the scene of simultaneous, long-running, and major territorial disputes between nuclear powers, for example China, India, and Pakistan. Simultaneous threat perceptions between three or more nuclear-armed states have produced a transformation of the Cold War nuclear dyads into interlinked nuclear chains today.¹⁰⁰

The Indian subcontinent and the Korean peninsula are two of the least unlikely theatres of a nuclear war and a direct China–United States confrontation from an escalation spiral starting in the South China seas is also possible. In mid-2017 China and India faced each other in a tense military confrontation at the tri-junction with Bhutan in the Doklam plateau for over two months.¹⁰¹ Premeditated nuclear strikes seem unlikely pathways to a nuclear exchange. But the toxic cocktail of growing nuclear stockpiles, expanding nuclear platforms, irredentist territorial claims, and out of control jihadist groups makes the Indian subcontinent a high-risk region of concern. Even a limited regional nuclear war, in which

⁹⁸ See Jargalsaikhan Enkhsaikhan, *Promoting Mongolia's Nuclear-Weapon-Free Status: Lessons Learned and Relevance for Northeast Asia*, APLN/CNND POLICY BRIEF No. 43 (August 2017), available at <<http://www.a-pln.org/briefings/briefings/>>.

⁹⁹ See Ramesh Thakur, *Asia-Pacific and Global Nuclear Orders in the Second Nuclear Age*, APLN/CNND POLICY BRIEF No. 21 (July 2016), available at <<http://www.a-pln.org/briefings/briefings/>>.

¹⁰⁰ THE STRATEGIC CHAIN: LINKING PAKISTAN, INDIA, CHINA, AND THE UNITED STATES (Robert Einhorn & W.P.S. Sidhu eds., 2017).

¹⁰¹ Ramesh Thakur, *It's High Noon on the Roof of the World*, and *India and China Provide Rare Glimmer of Hope*, JAPAN TIMES, 31 July and 1 September 2017.

India and Pakistan used fifty Hiroshima-size (15kt) bombs each, could cause a famine through nuclear winter effects that destroy crop production, disrupt global food distribution networks, and over a decade kill up to two billion people.¹⁰²

In an interview with *The Mainichi* in July 2017 [*sic*], General Pervez Musharraf, who was president of Pakistan in 2002, confessed to having contemplated the use of nuclear weapons in the year-long military standoff with India following a terrorist attack on India's Parliament in December 2001. He refrained from doing so for fear of Indian retaliation in kind.¹⁰³ The claim may be true or false: on matters of national security, Musharraf is more than capable of asserting something that fits Pakistan's narrative of a nuclearized bilateral conflict that the world should mediate. Regardless of the veracity of the claim, the very fact that Musharraf asserted it in an on-record interview has the consequence of further weakening the taboo on nuclear weapon use and softening the non-use norm.

Northeast Asia is the world's most dangerous cockpit for a possible nuclear war that could directly involve four nuclear-armed states, plus South Korea, Japan, and Taiwan. The pathways to a war that neither side wants include a fatal miscalculation in the instrumental recourse to brinksmanship by both sides. US threats could spook Kim Jong-un into launching a preemptive attack, or Kim's serial provocations could incite a South Korean or US military response that creates an unstoppable escalation spiral. The United States has repeatedly warned that the attainment of a weaponized ICBM nuclear capability that put the American mainland within reach of North Korean nuclear-tipped missiles would be regarded as and responded to as unacceptable. Although initially the Trump administration signalled that as part of the end of President Obama's policy of strategic patience, all options were on the table, the use of force was soon discarded because of the formidable difficulty of locating, hitting, and destroying all of North Korea's nuclear (and biological and chemical) warheads, facilities, materials, and delivery platforms in a surprise first strike. In addition, the several thousand artillery rockets that the North, which has trained to be on hair-trigger alert against a US attack for decades, can aim at the South, gives it the capacity to flatten Seoul and other targets, with the likely death toll in the hundreds of thousands. If Kim survives with even a few of his nuclear weapons, he could order one of the worst mass killings in history. But the logic of Trump's "America First" policy contains the inescapable rationale for preventing North Korea from acquiring the capacity to strike the US mainland, regardless of the scale and gravity of the harm inflicted on South Koreans, Japanese, and others in the region.¹⁰⁴

V. THE UN PROHIBITION TREATY

The NPT is the mother-lode of all nuclear treaties and informal arrangements, embraced by virtually the entire family of nations. It has indeed kept the nuclear nightmare at bay for five decades while underpinning and facilitating the global trade in nuclear material for

¹⁰² Ira Helfand, *Nuclear Famine: Two Billion People at Risk? Global Impacts of Limited Nuclear War on Agriculture, Food Supplies, and Human Nutrition* (Somerville MA: International Physicians for the Prevention of Nuclear War, 2013), available at <<http://www.ippnw.org/pdf/nuclear-famine-two-billion-at-risk-2013.pdf>>.

¹⁰³ Interview: Ex-Pakistani Pres. Musharraf Mulled Using Nukes Against India after 2001 Attack, *THE MAINICHI*, 26 July 2017, available at <<https://mainichi.jp/english/articles/20170726/p2a/00m/0na/018000c>>.

¹⁰⁴ Mark Bowden, *How to Deal with North Korea*, *THE ATLANTIC* (July/August 2017), available at <<https://www.theatlantic.com/magazine/archive/2017/07/the-worst-problem-on-earth/528717/>>. Accessed 7 July 2017.

peaceful purposes. While the NPT served the international community very well during the first nuclear age, thus, it has proven to be less fit for purpose for the second nuclear age. With a global retreat from nuclear power since the Fukushima accident in 2011, the lead on nuclear security being taken over by the four Nuclear Security Summits (2010–2016), the universalization of non-proliferation obligations to all countries that do not possess nuclear weapons, and no nuclear arms control negotiations taking place between any NWS in 2017, it is difficult to deny that the NPT's normative potential was exhausted. In the circumstances, one political philosopher has argued, mass defection from the NPT by non-NWS is not only ethically permissible; it may even be the ethically responsible course of action.¹⁰⁵

This is where the new UN ban treaty comes in. To its many state and civil society supporters, the NWPT represents completion of the NPT agenda with respect to nuclear disarmament. On balance, nuclear weapons endanger international security more than they provide national security, but nuclear-weapons-possessing states are trapped in the prism of basing nuclear policies on national calculations only. The accumulating anger and grievance of the non-NWS at the failure of those with nuclear weapons to eliminate them was married to heightened consciousness of the growing risks of nuclear weapons use, whether by design, inadvertence, or accident. The conjunction of frustration at the lack of disarmament progress and fears of an unwanted nuclear war reinforced the determination to look for an alternative framework or instrument for governing the global nuclear order.

In most respects, the NWPT text is significantly stronger than the NPT. Five prohibitions listed in Article 1 are especially noteworthy. First, it prohibits the *possession* of nuclear weapons for *all* signatories. Second, it bans the *use* of nuclear weapons. Third, it proscribes the *threat of use* of nuclear weapons, thereby delegitimizing the doctrine and practice of nuclear deterrence. Fourth, it prohibits *nuclear testing* and is thus more closely aligned to the CTBT. And fifth, it bans the *stationing* of nuclear weapons, so signatories would be legally required to ask for the withdrawal of all warheads stationed on their territory. This would affect NATO allies Belgium, Germany, Italy, the Netherlands, and Turkey, but not any of the three Pacific allies, although it would preclude the reintroduction of US tactical weapons into South Korea.

The NWPT also improves on the NPT in three other respects. It requires assistance to the victims of the use or testing of nuclear weapons and for environmental remediation of areas contaminated by the use or testing of nuclear weapons (Article 6). The NWPT also offsets some of the NPT's institutional deficits by scheduling biennial assemblies of states parties, with the first to be convened by the UN Secretary-General within one year of the treaty's entry into force. In addition, extraordinary meetings can be convened as necessary. Moreover, as the NPT regime is treaty based, its legal obligations do not extend to non-signatories. The NWPT has been crafted to bring all nine states under one common normative framework with the simple expediency of referring to any state "that after 7 July 2017 owned, possessed or controlled nuclear weapons or other nuclear explosive devices" (Article 4.1).

In her opening statement to the ban conference on 27 March, Ambassador Patricia O'Brien noted that Ireland's 1957 proposal was one of the antecedents for the NPT, and added: "For my delegation, there is an unbroken line from our NPT signature to our work here today and our commitment to the NPT remains unwavering. We want to see not just universalization but also implementation, including full implementation of Article VI

¹⁰⁵ Thomas E. Doyle, *The Moral Implications of the Subversion of the Nonproliferation Treaty Regime*, 2 ETHICS & GLOBAL POLITICS 131–153 (2009).

of the Treaty.”¹⁰⁶ Brazil’s Foreign Minister Aloysio Nunes Ferreira makes the same argument: “The agreement was a victory for the United Nations and multilateralism.” The resistance of the NWS notwithstanding, the NWPT “reflects the historical aspiration from the large majority of the international community to ban the existence of such weapons.” It is “an important complement” to Article VI of the NPT “which established the obligation of nuclear disarmament.”¹⁰⁷

A. Humanitarian Principles as the Normative Driver

With the refusal of the NWS to accept and implement the International Court of Justice (ICJ) Advisory Opinion in 1996 that Article VI obliges them to conclude good faith negotiations to eliminate nuclear arsenals (discussed below), the NPT was transformed from a prohibition into a non-proliferation regime. Because the NWS Article VI commitment to disarm was neither timetabled, precise nor binding, the NPT has failed to function as the primary normative framework for reducing nuclear warheads and delegitimizing the possession and deployment of nuclear weapons. Global numbers of nuclear warheads have fallen dramatically from over 70,000 in the 1980s to 15,000 in 2017, but this has occurred chiefly as a result of bilateral measures between Moscow and Washington.

Recognizing that failure and deeply frustrated by it, increasingly conscious of the risks and threats posed by the seemingly indefinite existence of nuclear weapons alongside dawning recognition of the catastrophic humanitarian consequences of any nuclear weapon use, and inspired by humanitarian principles, the international community adopted the NWPT. It powerfully affirms the UN Charter-based universal ideals of peace and justice among nations living in harmony with nature. Framing it in the language of humanitarian principles enables the advocates of the treaty to make the case that the possession, use, and threat of use of nuclear weapons are in basic conflict with international law, international humanitarian law, international human rights law, and humanitarian sensibilities.

The charge of nuclear apartheid laid against the NPT by Indians was deeply flawed. Apartheid in South Africa was a policy of racial superiority and differential treatment based in law imposed by a tiny conquering minority on the majority indigenous population. The NPT was freely signed by the vast majority of non-NWS who accepted a temporary exemption for those states that already possessed nuclear weapons when the treaty was signed. Nonetheless the apartheid label resonated the longer that the N5 insisted on retaining their arsenals while enforcing compliance, through their identity as the five permanent members of the UNSC (P5; that is, N5=P5), on anyone else wanting to join them in the exclusive nuclear club. As Brazil’s Ambassador (and later UN Under-Secretary-General for Disarmament) Sergio Duarte of Brazil remarked tartly at the failed 2005 NPT Review Conference: “One cannot worship at the altar of nuclear weapons and raise heresy charges against those who want to join the sect.”¹⁰⁸

¹⁰⁶ *Statement by Ambassador Patricia O’Brien*, New York, 27 March 2017, available at <<https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/womenpeaceandsecurity/Ireland-National-Statement-27-March-2017.pdf>>.

¹⁰⁷ Aloysio Nunes Ferreira, *Towards a World Free of Nuclear Weapons*, FOLHA DE S. PAULO, 17 July 2017, available at <<http://www.itamaraty.gov.br/en/speeches-articles-and-interviews/minister-of-foreign-affairs-articles/16886-rumo-a-um-mundo-sem-armas-nucleares-folha-de-s-paulo-17-7-2018>>.

¹⁰⁸ Quoted in Douglas Roche (former Canadian ambassador for disarmament), *HOW WE STOPPED LOVING THE BOMB: AN INSIDER’S ACCOUNT OF THE WORLD ON THE BRINK OF BANNING NUCLEAR ARMS* (2011), at 17.

In 1996 the World Court delivered an Advisory Opinion, sought by the UN General Assembly in 1994, on the legality of nuclear weapons. For present purposes there were three notable features of the Opinion. First, by the casting vote of the president the judges believed that “the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law” with respect to the just war principles of proportionality and civilian-combatant distinction. Second, the judges were unable to conclude definitively that the use of nuclear weapons would be justified *even in the extreme circumstances of the very survival of a state being under threat*. And third they advised, unanimously (that is with the concurrence of judges from every single NWS), 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.”¹⁰⁹

In the 2012 NPT PrepCom, sixteen countries issued a “Joint Statement on the Humanitarian Dimension of Nuclear Disarmament,” arguing that “it is essential that the humanitarian consequences of nuclear weapons are thoroughly addressed.”¹¹⁰ On 22 October 2012, a thirty-four-country joint statement argued that the catastrophic humanitarian consequences of nuclear weapons concern the community of states as a whole. They must never be used again, under any circumstances. “The only way to guarantee this is the total, irreversible and verifiable elimination of nuclear weapons, under effective international control.”¹¹¹ This was repeated in 2013 and 2014, with supporting countries increasing to 155.

In addition, three conferences were held in 2013–2014 on the humanitarian impact of nuclear weapons in Norway, Mexico, and Austria with growing numbers of countries participating. At the conclusion of the last humanitarian imperative conference in Vienna on 9 December 2014, the host country unilaterally issued the “Austrian Pledge” that committed it to work with like-minded states to “fill the legal gap for the prohibition and elimination of nuclear weapons.”¹¹² In addition, 127 countries signed a humanitarian pledge “to stigmatize, prohibit and eliminate nuclear weapons.”¹¹³

On 23 December 2016, the UN General Assembly called for negotiations on a “legally binding instrument to prohibit nuclear weapons, leading towards their total elimination”¹¹⁴ by a solid 113–35 majority, that would help fulfil the humanitarian pledge. The resolution conformed to the 1996 ICJ Advisory Opinion obligation and attempted to give practical expression to it. The ensuing UN conference successfully negotiated a new prohibition treaty over two sessions between March and July and adopted the treaty on 7 July. The NWPT is the most significant multilateral development on nuclear arms control since the indefinite extension of the NPT in 1995 and the adoption of the CTBT in 1996, if not since the adoption of the NPT itself in 1968.

¹⁰⁹ ICJ, Legality of the Threat or Use of Nuclear Weapons: Advisory Opinion, emphasis added, available at <<http://www.un.org/law/icjsum/9623.htm>>. The normative status of the Court’s Advisory Opinion is strengthened by the frequency of its recitation in UN General Assembly resolutions.

¹¹⁰ *Joint Statement on the Humanitarian Dimension of Nuclear Disarmament, 2012 NPT PrepCom*, Vienna, 2 May 2012, available at <<http://www.acronym.org.uk/old/official-and-govt-documents/joint-statement-humanitarian-dimension-nuclear-disarmament-2012-npt-prepcom>>.

¹¹¹ <[Http://www.psr.org/resources/joint-statement-on-the.html](http://www.psr.org/resources/joint-statement-on-the.html)>.

¹¹² <[Http://www.icanw.org/wp-content/uploads/2015/04/AustrianPledge-ICAN.pdf](http://www.icanw.org/wp-content/uploads/2015/04/AustrianPledge-ICAN.pdf)>.

¹¹³ <[Http://www.icanw.org/wp-content/uploads/2015/03/HINW14vienna_Pledge_Document.pdf](http://www.icanw.org/wp-content/uploads/2015/03/HINW14vienna_Pledge_Document.pdf)>.

¹¹⁴ Resolution 71/258, para. 8, available at <<http://www.icanw.org/campaign-news/un-general-assembly-approves-historic-resolution/>>.

As argued above, the primary drivers of the ban negotiations were deepening concern at the intensifying and multiplying risks and threats posed by the existence and deployment of nuclear weapons and doctrines, and mounting frustrations at the failure to eliminate them under existing frameworks and processes. Against this bleak nuclear landscape, the majority of non-NWS decided to switch roles from rule takers to norm setters, hijacked the process from the NWS, reclaimed nuclear agency, and proclaimed a more powerful and unambiguous prohibition norm. The NPT has been instrumentalized by the NWS as the one and only legitimizing principle for their own continued possession of nuclear weapons. The NWPT robs them of the last remaining fiction of legal justification as possessor states.

While NWS and allies allege that the ban treaty threatens the integrity of the NPT and the Geneva-based CD, it seems unarguable that their boycott of the UN conference was an open act of defiance and disrespect of a multilaterally mandated disarmament process involving two-thirds of the NPT membership. *Prima facie*, non-participation also placed them in non-compliance with the Article VI obligation of *all* 190 NPT states parties,¹¹⁵ not just the NWS, to pursue and conclude disarmament negotiations. The NWPT makes this obligation doubly sure by mandating that states parties undertake disarmament diplomacy: “Each State Party shall encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty” (Article 12).

B. Normative Primacy

The nuclear policy goals can be summarized as: delegitimize, prohibit, cap, reduce, and eliminate. In this five-part agenda, only those possessing nuclear weapons can undertake the last three tasks. But the non-nuclear weapon countries, who constitute the overwhelming bulk of the international community, can pursue the first (delegitimization) and second (prohibition) goals on their own, both as an affirmation of global norms (standards as distinct from prevailing patterns of behaviour); and as one of the very few means available to them of exerting pressure on the possessor states to pursue the other three goals. The NWPT affirms the collective revulsion of the international community at a morally unacceptable weapon of catastrophic destruction and it delegitimizes the very possibility of nuclear war as an unacceptable risk to human civilization.

The states opposing the NWPT recognized the threat and that is why they resisted and tried to discredit the process and the outcome so fiercely. In an unclassified NATO document of 17 October 2016 that urged allies to oppose ban negotiations, Washington conceded that “[t]he effects of a nuclear weapons ban treaty could be wide-ranging,” including making nuclear war planning more difficult.¹¹⁶ In other words, US opposition to the ban conference and the treaty was built not on the lack of practical effects of a ban treaty, but on the opposite: its very considerable impact in the real world. And to that extent dismissal of the new prohibition treaty as impractical because it will not help to eliminate a single nuclear warhead, since all nuclear-weapons-possessing states have rejected it, is fundamentally misconceived. It deliberately confuses the intended normative impact of the treaty with the operational results of a full-fledged NWC. The NWS did not dismiss the Chemical Weapons Convention as misguided because countries like Iraq and Syria were

¹¹⁵ The total of 190 states parties includes Palestine and the Vatican. Remarkably, the UN website still lists North Korea as a party despite its withdrawal in 2003, for a total of 191 states parties: available at <<http://disarmament.un.org/treaties/t/npt#>>.

¹¹⁶ <[Http://www.icanw.org/wp-content/uploads/2016/10/NATO_OCT2016.pdf](http://www.icanw.org/wp-content/uploads/2016/10/NATO_OCT2016.pdf)>.

unlikely to sign up. Their non-universality has not been a bar to action by the international community to enforce the global norm. Indeed when the Trump administration ordered unilateral cruise missile air strikes against alleged use of chemical weapons by the Assad regime in Syria in April 2017, the action was generally applauded within the United States and internationally.

As argued in the last section, the prohibition treaty will have a powerful normative impact on both the military utility and political value of nuclear weapons and thereby devalue the bomb as a global currency of power. To this end the NWPT will draw on the long-recognized unique role of the United Nations as the sole custodian and “dispenser of politically significant approval and disapproval of the claims, policies, and actions of states.”¹¹⁷ The main impact of the UN nuclear ban treaty will be to reshape the global normative milieu: the prevailing cluster of laws (international, humanitarian, and human rights), norms, rules, practices, and discourse that shape how we think about and act in relation to nuclear weapons. Stigmatization implies illegitimacy of a practice based on the collective moral revulsion of a community. The ban treaty aims to delegitimize and stigmatize the possession, use, and threat of use, and deployment of nuclear weapons, plus the practice of nuclear deterrence, owing to the foreseeable risks of possession and the unmanageable humanitarian consequences of any use. It will reaffirm the global nuclear norms of non-proliferation, disarmament, safety, security, and non-use. The successful ban conference could shatter irretrievably the NPT and the CD as the sole normative framework and multilateral forum, respectively, for nuclear non-proliferation and disarmament. But it will do so by revitalizing the multilateral machinery for the task.

C. Global Norms and Legal Obligations and Effects

Hedley Bull noted that “great powers are powers *recognised by others to have*, and conceived by their own leaders and peoples to have, certain special rights and duties.”¹¹⁸ The NPT recognized the major powers’ right to possess nuclear weapons as part of their special managerial responsibilities for world order; the leaders and peoples of the NWS continue to assert that right; but in the NWPT, international society as such has derecognized the right.

Norms are understood differently by scholars of International Law and International Relations.¹¹⁹ Legal norms impose binding legal obligations. Political norms create moral obligations. But the latter can still be encased in a wider legal context and have legal effects. In regulating state conduct, both laws and norms serve enabling (license) and restraining (leash) functions. The history of human rights movements (suffrage, anti-slavery, anti-apartheid) shows that while the social movements are motivated to enact moral norms into law, the moral authority of the norms by themselves exert a powerful “compliance pull” based on pedigree, determinacy, coherence, and adherence.¹²⁰ In general, legal norms are more effective in regulating state behaviour. But in specific instances, a particular law may be breached while a political norm may shape the decision—on an act of commission or omission—through a calculation of reputational costs. On mass atrocity crimes, for example, the 1948 Genocide Convention imposes legal obligations on states to act. By contrast the 2005 Responsibility to Protect (R2P) is a global political norm that creates a moral

¹¹⁷ INIS L. CLAUDE, *THE CHANGING UNITED NATIONS* (1967), at 73.

¹¹⁸ HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* (1977), at 202. Emphasis added.

¹¹⁹ Martha Finnemore, *Are Legal Norms Distinctive?*, 32 N.Y.U. J. INT’L L. & POL. 699–705 (2000).

¹²⁰ THOMAS M. FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* (1990).

responsibility but no legal duty on outside states to prevent and halt atrocities. However even R2P has to be interpreted and applied in the broader context of binding obligations on states under national and international, humanitarian, and human rights laws. For great powers in particular, R2P makes it more costly to resort to self-interested unilateral interventions, including so-called “humanitarian intervention,” as Russia discovered in South Ossetia in 2008, on the one hand; and to resist disinterested UN-authorized calls to collective action to save strangers from mass atrocities, on the other.¹²¹

The NWPT is legally binding, but only for signatories. The Preamble notes it is based on the “principles and rules of international humanitarian law,” including distinction, proportionality, avoidance of superfluous injury, and prevention of unnecessary suffering. It may not impose binding legal obligations but does have legal implications for non-parties. It is not relevant to *jus ad bellum*, the law of going to war. It aims to apply to *jus in bello*, how a war is conducted. As non-signatories, the nuclear-armed states and allies have no legal obligations arising from the NWPT as per the Vienna Convention on the Law of Treaties (1969). India’s foreign ministry spokesman Gopal Baglay said on 18 July that the treaty “in no way constitutes or contributes to the development of any customary international law.” India, he emphasized, is not party “and so shall not be bound by any of the obligations that may arise from it.”¹²² While this is correct with regard to India which is not party to the NPT, the position is somewhat more ambiguous for NPT parties. When India conducted nuclear tests in 1998, the NS/P5 and others imposed sanctions in retaliation even though India was not party either to the NPT or the CTBT. The latter had been blocked in the CD by India and was taken to the UN General Assembly to escape India’s veto. One could thus argue that the NWPT-dissenting states that circumvented the CD in 1996 to invoke the universal legitimacy of the General Assembly for adopting the CTBT have been hoist by their own petard.

Besides, international law comprises both treaty law and customary international law. Customary law in turn has two roots, state practice and *opinio juris* which at its simplest means that the practice of states is based in a sense of legal obligation.¹²³ To reach the threshold of law, the practice must be both widespread and consistent. This is the basis on which North Korea’s program of nuclear testing can be condemned and sanctioned, even though it is not a CTBT party. Given the explicit rejection of the ban treaty by a substantial number of states, and the identity of the rejectionist states—in particular the P5—the ban treaty cannot credibly be claimed to impose any legal obligation on non-signatories.

The nuclear discourse of the NWS “moves easily from” the position that the NPT permits them to possess and deploy nuclear weapons, “to the language of entitlement, legal rights and enduring legitimacy.”¹²⁴ They are able to claim legitimacy through the NPT

¹²¹ See THAKUR, *supra* note 31, at 272–300.

¹²² Wire staff, *Nuclear Ban Treaty Doesn’t Contribute to Customary International Law: India*, THE WIRE, 18 July 2017, available at <https://thewire.in/159057/nuclear-ban-treaty-customary-law/?mkt_tok>.

¹²³ Anthony J. Colangelo, *The Duty to Disobey Illegal Nuclear Strike Orders*, NAPSNET POLICY FORUM, 9 October 2017, at 14, available at <<https://nautilus.org/napsnet/napsnet-policy-forum/the-duty-to-disobey-illegal-nuclear-strike-orders/>>.

¹²⁴ Nick Ritchie, *Nuclear Disarmament and a Nuclear Weapons Ban Treaty*, in THE NPT AND THE PROHIBITION NEGOTIATION: SCOPE FOR BRIDGE-BUILDING (Geneva: UNIDIR, May 2017), at 13, available at <<http://www.unidir.org/files/publications/pdfs/the-npt-and-the-prohibition-negotiation-en-682.pdf>>. A good example of the entitlement mentality under the NPT is a briefing at Carnegie in Washington, D.C., on the ban treaty by Chris Ford on 22 August 2017: available at <<http://carnegieendowment.org/2017/08/22/briefing-on-nuclear-ban-treaty-by-nsc-senior-director-christopher-ford-event-5675?>>.

because it allegedly gave legal cover to their possession of nuclear weapons—and to no one else—until such time as they themselves negotiate the elimination of their stockpiles. But non-NWS are the majority shareholders in the NPT society of states and by acting together they have taken back that legitimacy. By changing the prevailing normative structure, the NWPT shifts the balance of costs and benefits of possession, deterrence doctrines, and deployment practices and will create a deepening crisis of legitimacy. It removes the fig leaf of international legitimacy, rooted in the NPT, that the NWS have used in which to cloak their nuclear weapons, while insisting that the pursuit of nuclear weapons by anyone else is both illegal (a violation of the international law of treaties) and illegitimate (a violation of the global norm).

The NWPT's legal effect will lie in strengthening the *disarmament norm* under Article VI of the NPT itself for NPT states parties, and removing the NPT-sourced legal and legitimizing plank for continued possession, deployment, and doctrines of use by the NWS. It will certainly be deployed by supporter states and civil society advocates as evidence of a new *global political norm against possession*. With fifty ratifications to bring the treaty into force, the normative impact may be limited at first but will begin to expand once the number of states parties crosses the psychological threshold of one hundred. It will gain further weight if some of the key NATO and Pacific allies (Canada, Norway, Japan) defect from the rejectionist camp and join the ban treaty under civil society pressure whose advocacy explicitly references the NWPT.

Meanwhile the *non-use norm* (or, in a weaker variant, the nuclear restraint norm) does satisfy the threshold of consistent and widespread state practice and is arguably a mandatory norm, *jus cogens*: a peremptory norm framed in the language of prohibition from which no state can opt out unilaterally. One common explanation for the non-use of nuclear weapons since 1945 is that the NWS feared assured mutual destruction. An alternative explanation is that the normative taboo against the use of nuclear weapons is so strong that on several occasions the NWS accepted defeat in places like Vietnam and Afghanistan rather than use the bomb to destroy their enemies.¹²⁵ But lately technological developments have begun to blur the dividing line between conventional precision munitions and nuclear weapons. The NWPT will harden the normative boundary between conventional and nuclear weapons.

Nuclear weapons obliterate the distinction between combatants and civilians that is central to every moral code in all cultures and civilizations. Most countries have chosen nuclear abstinence because people overwhelmingly abhor the bomb as deeply immoral. It is the most indiscriminately inhumane weapon ever invented. Its primary intended deterrent effect relies on the threat to kill millions of innocent civilians, accurately called the balance of terror. On 3 July, conference president ambassador Elayne Whyte Gomez of Costa Rica said: "Each one of us has assumed the historic responsibility to give humankind *an instrument that reflects the moral imperative of prohibiting nuclear weapons* and leading to a future free of nuclear weapons."¹²⁶

The NWPT Preamble acknowledges "the ethical imperatives for nuclear disarmament" and describes a nuclear-weapon-free world as "a global public good of the highest order, serving both national and collective security interests." It expresses deep concern "about the catastrophic humanitarian consequences that would result from any use of nuclear

¹²⁵ NINA TANNENWALD, *THE NUCLEAR TABOO: THE UNITED STATES AND THE NON-USE OF NUCLEAR WEAPONS SINCE 1945* (2007).

¹²⁶ Kyodo News Service, *Nuclear Weapons Ban Treaty Likely to Be Adopted This Week at U.N.*, JAPAN TIMES, 4 July 2017, emphasis added. Available at <<http://www.japantimes.co.jp/news/2017/07/04/national/politics-diplomacy/nuclear-weapons-ban-treaty-likely-adopted-week-u-n/>>.

weapons” that pose “grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls.” It notes “the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons,” and recognizes the “disproportionate impact of nuclear-weapon activities on indigenous peoples.” And it reaffirms “that any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience.”

Another critical legal gap that has been closed is the threat of use of nuclear weapons. Arguably, such a prohibition is already covered under the general prohibition on the use or threat of use of force in Article 2(4) of the UN Charter. The political reality, however, is that threats to use force are a regular staple of world affairs (“All options are on the table”) and, given the existing state of nuclear politics, the inclusion of an explicit prohibition on the threat of use of nuclear weapons fills a legal gap. In this way too the treaty has legal effects on non-signatory state actions.

Rhetoric and repeated vague “promises” to the contrary over the decades notwithstanding, the NWS have institutionalized nuclear deterrence as a permanent national security doctrine and deploy their interpretation of the NPT as the main legitimizing normative framework and the principal management tool. By contrast the alternative NWPT normative framework begins with the unambiguous and unconditional stigmatization of the possession, use, and threat of use of nuclear weapons, and outlines credible pathways to negotiated nuclear disarmament. Most crucially, because it is a UN-approved treaty resulting from a mandated multilateral conference, it gives authoritative legal underpinning to the civil society–led stigmatization of nuclear weapons. In turn this means that anti-nuclear advocates in all the possessor and umbrella countries can draw on the legitimacy of the NWPT to alter the prevailing domestic normative milieu.

VI. NPT–NWPT TENSIONS

The nearly two-thirds overlap in membership between the NPT and the NWPT points to the substantial potential for complementarity and mutual reinforcement. But the one-third of absentees from the conference include all countries that possess nuclear weapons, plus all the US Atlantic and Pacific allies. In their view, the NWPT risks jeopardizing international security by damaging the NPT which has served the international community well for five decades. As well as constituting a strong and significant minority, these include some of the best UN citizen states. Their absence through boycott, plus their opposition to the NWPT, points to the considerable potential for tension and conflict between the two treaties.

With the NPT and the NWPT operating in parallel, the global nuclear order has been effectively bifurcated. Only time will tell if this stabilizes or perturbs the global nuclear order. There could be no better illustration of its bifurcation than the full-spectrum divisions among the Nordic countries, who normally tend to be cohesive in their international policies. Sweden was a ban treaty supporter from start to finish.¹²⁷ Finland abstained

¹²⁷ In late August, the *Svenska Dagbladet* reported that US Defense Secretary James Mattis had formally written to Sweden’s Defence Minister Peter Hultqvist that signing the NWPT would damage US-Sweden defence cooperation and bilateral relations. *US Defence Secretary Mattis Warned Sweden Not to Sign Anti-Nuclear Weapons Treaty: Report*, THE LOCAL, 30 August 2017, available at <<https://www.thelocal.se/20170830/us-defence-secretary-mattis-warned-sweden-not-to-sign-anti-nuclear-weapons-treaty-report>>. As of October 2017, Sweden in fact had not signed the treaty: available at <https://en.wikipedia.org/wiki/Treaty_on_the_Prohibition_of_Nuclear_Weapons#Parties_and_signatories>.

in the October 2016 First Committee vote calling for the conference and did not take part in it in 2017. Denmark voted against in October and its UN ambassador joined the United States in the protest outside the conference room on 27 March 2017. NATO members Iceland and Norway joined the boycott of the conference. Yet Norway had convened the first humanitarian conference in Oslo in March 2013 and nineteen of the twenty-five non-nuclear NATO states attended all three humanitarian conferences, and all twenty-five states attended at least two. The change of government in Norway in October 2013 altered its domestic governing configuration as the ban-sceptic Conservatives took office. A Labour Party parliamentarian criticized the government's October 2016 decision to vote against convening the UN conference as "a breach of Norway's leadership role" in the humanitarian consequences movement.¹²⁸

The existence of the UN ban treaty has created a new political reality. Part of the required readjustments will include not just managing relations between the NPT and the ban treaty, and between the ardent supporters and vehement critics of the latter. In addition, it will require managing intra-European Union and intra-alliance relations and also domestic demands and expectations. As long as nuclear weapons are integral to NATO's mission and security-cum-operational doctrine, NATO membership cannot be compatible with the core obligations of the NWPT. But significant domestic constituencies in several alliance members will continue to demand signature of the ban treaty and the only credible route to defusing their demands will be to demonstrate continued concrete progress on nuclear disarmament. Hitherto nuclear deterrence has been privileged absolutely over calls for disarmament. The explanation provided for lack of credible disarmament progress has been the adverse regional and international security environments. Henceforth the publics in many NATO members will demand that the nuclear-armed states take the necessary steps to create the more favourable security conditions to reduce nuclear risks and facilitate practical nuclear arms control and disarmament measures.

In the long history of the NPT and the even longer history of the United Nations, this marks the first time that the two have diverged on global nuclear policy. Former UN Under-Secretary-General for Disarmament Jayantha Dhanapala has pointed to the risk that the multilateral NPT review process and the UN-mandated NWPT could have a mutually undermining influence to damage each other's prospects for success.¹²⁹ Paul Meyer, a former Canadian disarmament ambassador, believes that the NPT "is in mortal peril" because an "enormous fissure has opened regarding the right course of action to realize the treaty's disarmament objectives." Meyer adds that this "existential threat . . . will require dedicated remedial action."¹³⁰

Nuclear disarmament sceptics keep insisting that the nuclear genie, having escaped from the bottle, cannot be pushed back in. The same comment now applies to the NWPT: it is the new institutional reality that cannot be reversed and the opponents have to deal with it instead of retreating into petulant denialism. The NWPT does provide pathways for possessor states to eliminate nuclear arsenals and programs and then join the treaty (Article

¹²⁸ Quoted in Emil Dall, *A Balancing Act: NATO States and the Nuclear Ban Treaty*, ELN ISSUE BRIEF (London: European Leadership Network, July 2017), at 4–5, available at <http://www.europeanleadershipnetwork.org/a-balancing-act-nato-states-and-the-nuclear-ban-treaty_4969.html?mc_cid=f9b5dd1312&mc_eid=d9a671ba83>.

¹²⁹ Jayantha Dhanapala, *NPT 2020 Review Underway: Is the NPT Still Relevant?* APLN/CNND POLICY BRIEF No. 38 (Canberra/Seoul: April 2017), available at <http://www.a-pln.org/briefings/briefings_view/Policy_Brief_38_-_NPT_2020_Review_Underway:_Is_the_NPT_Still_Relevant>.

¹³⁰ Meyer, *supra* note 33, at 16.

4.1) (destroy-and-join states); or to join the treaty first and commit to a time-bound, verifiable, and irreversible elimination (Article 4.2) (join-and-destroy states). In both cases, independent confirmation and verification would be required. Those that host nuclear weapons controlled by possessor states can also join on condition of verifiably removing them promptly (Article 4.4). Although the treaty is of indefinite duration and not subject to any reservations, a state party may withdraw from it on twelve months' notice if "extraordinary events . . . have jeopardized [its] supreme interests" (Article 17).¹³¹ Amendments may be made after the treaty has entered into force by a two-thirds majority of the parties (Article 10).

Forty-nine years after its adoption, the NPT had yet to produce a nuclear disarmament treaty. By contrast, the UN conference succeeded in negotiating a prohibition treaty within four weeks. On the one hand, this is powerful testament to what can be done in international negotiations under UN auspices with sufficient goodwill and determination among participating states. On the other hand, the timeframe is absurdly short for the negotiation of such a politically consequential and technically complex treaty of permanent duration. Not surprisingly, therefore, ambiguities abound and clarifications are likely to be sought for years to come over the meaning and application of particular clauses.¹³²

The NWPT stipulates that possessor states that choose to join-and-destroy must:

immediately remove [their nuclear weapons] from operational status, and destroy them as soon as possible but not later than a deadline to be determined by the first meeting of States Parties, in accordance with a legally binding, time-bound plan for the verified and irreversible elimination of that State Party's nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities (Article 4.2).

This can be read in five different ways:

1. Whether intended or not, it would seem to imply that after the first assembly of states parties, a nuclear-armed country can join only after first destroying its nuclear weapons. In that case the article will cease to be relevant after that date.
2. Or it could refer to the first meeting of states parties after the concerned state has joined the treaty consequent to having destroyed its nuclear weapons and/or materials.
3. Alternatively, it could mean that the first meeting of states parties will set a calendar date by which all weapons must be destroyed, nuclear programs terminated, and

¹³¹ The withdrawal clause proved one of the more contentious issues at the conference, both on the right to withdraw from a prohibition treaty in principle, and on "supreme interests" as the justification. See *News in Brief*, NUCLEAR BAN DAILY 2:9 (28 June 2017), available at <<http://www.reachingcriticalwill.org/disarmament-fora/nuclear-weapon-ban/reports/11782-nuclear-ban-daily-vol-2-no-9>>; and *Frequently Asked Questions on Withdrawal*, NUCLEAR BAN DAILY 2:12 (4 July 2017), available at <<http://www.reachingcriticalwill.org/disarmament-fora/nuclear-weapon-ban/reports/11785-nuclear-ban-daily-vol-2-no-12>>.

¹³² For an early assessment, see John Carlson, *The Nuclear Weapons Prohibition Treaty: Aim, Scope and Limitations*, APLN/CNND POLICY BRIEF No. 42 (Canberra/Seoul: Asia-Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament, July 2017), available at <<http://www.a-pln.org/briefings/briefings/>>.

nuclear facilities converted to non-nuclear activities: say 2025 or even 2050 by way of example. In this case too the article will cease to be relevant after that date.

4. Another possible interpretation is that the meeting will set a deadline in terms of number of years, for example ten or twenty, *from that meeting*.
5. Finally, even here a variation is possible: “x” number of years *from whenever a new state party joins the treaty*.

Article 4.6 of the ban treaty provides that parties “shall designate a competent international authority or authorities to negotiate and verify the irreversible elimination of nuclear-weapons programmes.” Nuclear-armed states following either the destroy-and-join or the join-and-destroy pathway to elimination are enjoined to cooperate with this authority (Articles 4.1 and 4.2). This too is ambiguous. Is this to be a new entity, the IAEA, or a combination of the two? Creating a new entity to do tasks that the IAEA does risks a duplication of functions and an erosion of the IAEA’s authority. The word “international” is similarly ambiguous, seeming to preclude a bilateral or regional entity.

Another institutional ambiguity concerns the role of the biennial (or extraordinary) meetings and six-yearly review conferences of NWPT states parties (Article 8), and its relationship to the NPT PrepComs and Review Conferences. This is especially so because of the strong overlap of membership and nuclear policy-setting agendas of the two global treaties. Some coordination will clearly be required to avoid duplication, confusion, and outright contradiction of outcomes from the two parallel processes.

The prohibition of Article 1.1(e) is open to disputed interpretations. It enjoins parties “never under any circumstances to . . . [a]ssist, encourage or induce, in any way, anyone to engage in any” prohibited activity. Does hosting a visit by a nuclear weapon capable ship or aircraft, without first demanding clarification that they are not carrying nuclear weapons, constitute “assistance”? The prohibition could conceivably extend to hosting installations that are somehow related to the nuclear weapons infrastructure, including command, control, and intelligence facilities. And the prohibition could also be read to imply that an ally can no longer officially declare it depends for its national security on the nuclear weapons of the United States.

As for gaps, earlier drafts of the treaty would have kept open the possibility of involving nuclear-armed states with key goals and processes.¹³³ For example, they could have become protocol states for certain specified purposes like no-first-use of nuclear weapons, or de-alerted nuclear weapons, as part of their preferred step-by-step approach.

There is scope even for normative tensions. The first major philosophical and operational tension between the two global treaties for setting nuclear policy directions is in their conflicting views of deterrence. The NWPT prohibition on the use and threat of use of nuclear weapons is incompatible with the doctrine and practice of deterrence. Believers hold that nuclear deterrence helped to underpin the long peace of the Cold War and contributed to strategic stability among the great powers. To rid the world of nuclear weapons prematurely is to make the world safe again for major power war which, given today’s powerful conventional weapons, would be far more destructive and devastating than the Second World War. Part of the operational manifestation of the successful policy of deterrence, in this view, has been the deployment of nuclear weapons owned and controlled by the Western NWS on the territory of non-NWS NATO allies. But under the NWPT prohibitions, NATO allies

¹³³ See, for example, Ray Acheson, *Pathways to Elimination*, NUCLEAR BAN DAILY 2:4 (20 June 2017), available at <<http://www.reachingcriticalwill.org/disarmament-fora/nuclear-weapon-ban/reports/11776-nuclear-ban-daily-vol-2-no-4>>.

would be required to remove all nuclear weapons from their territory, thereby undermining confidence in the security guarantee of the alliance with unpredictable consequences for the peace of Europe.

Yet the role of nuclear weapons in having preserved the long peace among the major powers during the Cold War is debatable. How do we assess the relative weight and potency of nuclear weapons, West European integration, and West European democratization as explanatory variables in that long peace? No evidence exists to show that either side had the intention to attack the other at any time during the Cold War, but was deterred from doing so because of nuclear weapons held by the other side.¹³⁴ The dramatic Soviet territorial expansion across Eastern and Central Europe took place in the years of US atomic monopoly, 1945–1949; and the Soviet Union imploded after, although not because of, gaining strategic parity.

The role of nuclear weapons in driving Japan to surrender in August 1945 is also highly dubious. A careful examination of the relevant chronology and historical record concludes convincingly that the key decisive factor in Japanese decision-makers' minds was the anticipated entry of the Soviet Union into the Pacific war against the essentially undefended northern approaches, and the fear they would be the occupying power unless Japan surrendered to the United States first.¹³⁵ Nor, for that matter, did the Truman administration believe at the time that the two bombs were war-winning weapons. Rather, their strategic impact was vastly under-estimated and they were thought of merely as an incremental improvement on the existing weaponry of war.¹³⁶ It was only after August 1945 that the military, political, and ethical enormity of the decision to use atomic/nuclear weapons gradually sank in.

The belief that nuclear weapons permit a state to deploy coercive bargaining power as an act of compellence or nuclear blackmail has little evidence in history. There is no known instance of a non-nuclear state having been intimidated into changing its behaviour by the threat of being bombed with nuclear weapons. Sechser and Fuhrmann analysed 210 militarized “compellent threats” from 1918 to 2001; that is, demand of a target state to change behaviour or else force would be used against it. NWS succeeded in just 10 of the 210 cases (even then the presence of nuclear weapons may not have been the decisive factor compared to their general military superiority); non-nuclear states were more successful at coercion than nuclear-armed states (32:20 per cent); and nuclear monopoly gave no more assurance of success. In a different data set of 348 territorial disputes 1919–1995, possessor and non-possessor states won territorial concessions at almost the same rate (35:36 per cent).¹³⁷

The contemporary risks of proliferation to and use by irresponsible states in volatile conflict-prone regions or even by suicide terrorists outweigh realistic security benefits. Most importantly, the foreseeable effects of any future use, especially the humanitarian consequences, make the possession of nuclear weapons and doctrines of use and threat morally unacceptable. These contrasting views in the efficacy versus disutility of nuclear weapons need to be reconciled.

¹³⁴ James E. Doyle, *Why Eliminate Nuclear Weapons?*, SURVIVAL 55:1 (2013), at 7–34.

¹³⁵ Tsuyoshi Hasegawa, *The Atomic Bombs and the Soviet Invasion: What Drove Japan's Decision to Surrender?*, THE ASIA-PAC. J. 5:8 (August 2007), at 1–30; WARD WILSON, FIVE MYTHS ABOUT NUCLEAR WEAPONS (2013), chapter 1.

¹³⁶ MICHAEL D. GORDIN, FIVE DAYS IN AUGUST: HOW WORLD WAR II BECAME A NUCLEAR WAR (2007).

¹³⁷ TODD S. SECHSER & MATTHEW FUHRMANN, NUCLEAR WEAPONS AND COERCIVE DIPLOMACY (2017).

By bringing all nuclear-weapons-possessing states within one normative framework, the NWPT eliminates the distinction between the five NPT-licit NWS (China, France, Russia, United Kingdom, United States), the three extra-NPT nuclear-armed states (India, Israel, Pakistan) and the sole NPT defector state (North Korea). For the NWPT any country that possesses nuclear weapons after 7 July is a violator of the global prohibition norm, implying a moral equivalency between the five NWS and others. Yet for the foreseeable future, despite its many representational and democratic deficits, there is no substitute for the UNSC as the legal enforcement arm of the international community. Whether it be with regard to safeguards applied by the IAEA, or other competent international authorities performing some of the other specified tasks in the NWPT in Article 4, breaches of their obligations by NWPT states parties will require enforcement if the treaty is not to lose credibility and authority. How can the PS act as the primary enforcement agents of NWPT obligations when the primary point of the treaty is to stigmatize their nuclear policy and they are its principal norm violators? And if not the PS, who else can do this?

A. Confluence of Normative Frameworks and Operational Agendas

The international community has so far banned two entire classes of WMD—biological and chemical weapons. It has also negotiated treaties prohibiting some categories of particularly indiscriminate and inhumane conventional weapons—landmines and cluster munitions. By no means every country has signed these conventions: the biggest users and producers of cluster munitions, and those with the largest anti-personnel-mine stockpiles, are not parties. But the conventions nonetheless exercise strong normative force and quite directly influence the behaviour of non-states parties. The CTBT provides a very clear example of this for, although its peculiar requirement for universal ratification by Annex 2 states prior to entry-into-force could leave the treaty in a perpetual limbo, the current voluntary moratorium on nuclear testing (with the sole exception of North Korea) has enormous practical effect.

Even short of abolition, a minimization agenda¹³⁸ could be pursued by reducing warhead numbers, curtailing the role and visibility of nuclear weapons in national security doctrines, and imposing restrictions on their deployment postures. Russia and the United States, with 93 per cent of global nuclear stockpiles, could extend New START and commence negotiations for substantial further cuts to warhead numbers. Once these two have reduced their arsenals down from several thousand to a few hundred each, China could be drawn into the negotiations followed by the other nuclear-armed states. The two nuclear superpowers could also reduce reliance on nuclear weapons in their national security policy by unilateral or mutually agreed changes to nuclear postures, doctrines, and deployment practices like launch-on-warning and first use of nuclear weapons. NFU and de-alerting are strategic steps in downgrading the military role of nuclear weapons¹³⁹ and transforming relations between nuclear adversaries from one of hostile confrontation to antagonistic collaboration. They would confirm nuclear weapons as weapons of last resort, reinforce the normative barrier against use, and permit the dismantlement of vulnerable

¹³⁸ See *Eliminating Nuclear Threats: A Practical Agenda for Global Policymakers*, REPORT OF THE INTERNATIONAL COMMISSION ON NUCLEAR NON-PROLIFERATION AND DISARMAMENT (Canberra and Tokyo: International Commission on Nuclear Non-Proliferation and Disarmament, 2009), at 73–76.

¹³⁹ Department of Foreign Affairs, Switzerland, East-West Institute, and Ministry of Foreign Affairs, New Zealand, *Re-framing Nuclear De-Alert: Decreasing the Operational Readiness of U.S. and Russian Arsenals* (New York: East-West Institute, 2009), at 15.

land-based warheads. Moreover, indefinite reliance on first use and on short notice alert can legitimize the nuclear ambitions of others by validating their role in providing national security. There is thus a non-proliferation as well as a disarmament and crisis stability argument for de-alerting.

B. No First Use

The purposes of declaratory policy include providing intellectual guidance to military planners, deterring adversaries, and reassuring allies and friends. They also shape global nuclear norms like deterrence, non-proliferation, security, and non-use. The last in particular has come under severe strain, deepened still further by tweet-prone President Trump, from the fact that the strategic boundary between nuclear warheads and conventional precision munitions is being steadily eroded. An NFU policy would strengthen strategic stability, reinforce the normative boundary between nuclear and conventional weapons, deepen the illegitimacy of any first use of nuclear weapons, and devalue the currency of nuclear weapons.

In practice, first use of nuclear weapons lacks strategic logic. Under the first-use policy, US nuclear weapons are aimed at 1,000 Russian, 500 Chinese, and dozens of other targets in North Korea and other non-nuclear-weapons-possessing states.¹⁴⁰ The moral opprobrium of using nuclear weapons against a non-nuclear country would be too high a price to pay for any security gains. This explains why Argentina invaded the Falkland Islands in 1982 despite the British nuclear deterrent: it was confident that the United Kingdom would not escalate to the use of nuclear weapons. Against nuclear adversaries, any first use would provoke a nuclear retaliation. Rather than sensible policy, therefore, a first-use policy is a commitment to mutual suicide. Because nuclear adversaries know this, the threat of first use is non-credible and no policy that is not credible can successfully deter any aggression.

NFU does not guarantee no first use, any more than a first-use policy guarantees first use. What is crucial are declarations, doctrines, postures, and deployments that reduce risks. An NFU policy would eliminate the rationale for forward deployment of US nuclear weapons on the territory of NATO allies in Europe:¹⁴¹ those based in Turkey were a matter of some concern during the failed coup attempt in July 2016.

China and India are the only two nuclear-armed states committed to NFU in current nuclear policies. If no other nuclear powers follow their examples, they too might abandon NFU and put some nuclear weapons on high alert.¹⁴² If China follows the Russian and US lead, how long before the posture proliferates to India and Pakistan? Conversely, the intent that is signalled by a declaration of NFU can be buttressed by a nuclear restraint regime. If adopted by all nuclear-armed states, NFU could become the centrepiece of a global nuclear restraint regime. The physical qualities of nuclear forces and infrastructure would be

¹⁴⁰ Bruce Blair, *How Obama Could Revolutionize Nuclear Weapons Strategy Before He Goes*, POLITICO, June 22, 2016, available at <<http://www.politico.com/magazine/story/2016/06/barack-obama-nuclear-weapons-213981>>.

¹⁴¹ James E. Cartwright & Bruce G. Blair, *End the First-Use Policy for Nuclear Weapons*, N.Y. TIMES, August 14, 2016, available at <http://www.nytimes.com/2016/08/15/opinion/end-the-first-use-policy-for-nuclear-weapons.html?emc=eta1&_r=2>. Total NATO nuclear weapons stationed in non-NWS in Europe: 160–240 (Belgium 10–20, Germany 20, Italy 70–90, Netherlands 10–20, Turkey 50–90).

¹⁴² Gregory Kulacki, *China's Military Calls for Putting Its Nuclear Forces on Alert* (Cambridge MA: Union of Concerned Scientists, January 2016), at 1, available at <<http://www.ucsusa.org/sites/default/files/attach/2016/02/China-Hair-Trigger-full-report.pdf>>.

reconfigured to make them suitable only for deterring nuclear attack and less useful for offensive actions.

A key factor inhibiting Washington from adopting NFU is nervousness of some European and Asian allies who seek security under the protective umbrella of US nuclear weapons.¹⁴³ For example the Australian Defence White Paper stated: “Only the nuclear and conventional military capabilities of the United States can offer effective deterrence against the possibility of nuclear threats against Australia.”¹⁴⁴ The reliance of Japan and South Korea on the US nuclear umbrella is even greater, given their propinquity to North Korea and China (as well as Russia as the third Northeast Asian nuclear-armed state).

Gregory Kulacki has written that four officials of Japan’s embassy in Washington, without the knowledge of their own government, made formal submissions to a congressional commission preparing an advisory report to the forthcoming US Nuclear Posture Review. They lobbied the Obama administration to reverse the decision of President George H. W. Bush to remove tactical nuclear weapons from the region. They did not realize that under standard congressional practice the submissions would be made public and when it was, the resulting furore in Tokyo forced the government to make official responses. Foreign Minister Katsuya Okada wrote a letter in December 2009 that extended deterrence did not “require the maintenance of policies, strategies or weapons that conflict with the U.S. President’s goal of a moving towards a world without nuclear weapons.”¹⁴⁵ But in July 2016 the Shinzo Abe government sought urgent talks with Washington to convey strong concerns over the possibility of the United States adopting NFU, describing it as “unacceptable.”¹⁴⁶

Thus a first-use policy, even though it makes no operational sense as a policy of deterrence, might serve the purpose of strategic reassurance of the umbrella states. If so, the latter are suffering from a potentially fatal illusion. Allies who believe that the United States would be the first to use nuclear weapons in any conflict, says Michael Krepon, “are attached to a fiction and a psychological crutch.”¹⁴⁷ The use of nuclear weapons to defend an ally against a nuclear-armed adversary would risk nuclear retaliation against the United States. Faith in a first-use policy rests in the final analysis on suspended disbelief. A nuclear umbrella may offer protection of the great and powerful ally, but any actual use ceases to be protective and instead morphs into the most catastrophically self-destructive security guarantee imaginable. The limited utility of nuclear deterrence rests on the certainty of nuclear retaliation, not in any belief in its first use. As Krepon notes, a first-use posture by Pakistan did not prevent a limited war between nuclear adversaries India and Pakistan in 1999, did not affect its outcome, and did not prevent dangerous crises from developing.

¹⁴³ Josh Rogin, *U.S. Allies Unite to Block Obama’s Nuclear ‘Legacy’*, WASHINGTON POST, August 14, 2016, available at <https://www.washingtonpost.com/opinions/global-opinions/allies-unite-to-block-an-obama-legacy/2016/08/14/cdb8d8e4-60b9-11e6-8e45-477372e89d78_story.html?utm_term=.a6057a1e0767>.

¹⁴⁴ Department of Defence, 2016 Defence White Paper (Canberra: Government of Australia, 2016), para. 5.20.

¹⁴⁵ GREGORY KULACKI, *JAPAN AND AMERICA’S NUCLEAR POSTURE: AN UPDATE* (Cambridge MA: Union of Concerned Scientists, November 2013), at 3, available at <<http://www.ucsusa.org/sites/default/files/legacy/assets/documents/nwgs/Japan-US-Nuclear-Posture-Update.pdf>>.

¹⁴⁶ Kyodo News, *Japan Seeks Talks With U.S. Over ‘No First Use’ Nuclear Policy Change*, JAPAN TIMES, July 15, 2016, available at <<http://www.japantimes.co.jp/news/2016/07/15/national/japan-seeks-talks-u-s-no-first-use-nuclear-policy-change/>>.

¹⁴⁷ Michael Krepon, *Not Just Yet for No First Use*, ARMS CONTROL WONK, July 31, 2016, available at <<http://www.armscontrolwonk.com/archive/1201722/not-just-yet-for-no-first-use/>>.

A second objection to NFU concerns the risks of nuclear breakout by worried US allies. Rising nationalism in the region, maritime territorial disputes, North Korea's nuclear defiance, and doubts about the reliability of US deterrence have been catalysts for pro-nuclear arguments in Japan and South Korea.¹⁴⁸ An opinion poll in September 2016 showed a 60 per cent support for Seoul developing its own nuclear weapons.¹⁴⁹ But the US umbrella, the bilateral US treaty that prohibits diversion of nuclear material to weapons-relevant programs in return for US fuel for its power reactors, and the negative diplomatic and economic repercussions of withdrawing from the NPT constitute powerful arguments in support of the denuclearized status quo.

Meanwhile Japan has stockpiled about 11 tonnes of plutonium, enough to make more than 2,000 bombs.¹⁵⁰ Nevertheless internationally the NPT constrains the weapon option, the US nuclear extended deterrence bolsters Japan's security confidence and weaponization could rupture relations with Washington and poison relations in the region. Domestically, the three non-nuclear principles,¹⁵¹ the very strong nuclear allergy in public opinion, the atomic energy basic law that limits nuclear activity to peaceful purposes, and legal, bureaucratic, scientific, and public opinion potential vetoes¹⁵² are additional powerful constraints on weaponization.

C. De-alerting

Between them, Russia and the United States deploy about 1,800 nuclear warheads on high alert, ready to launch on warning of incoming enemy missiles as soon as they have been detected. Like first use, this practice too is a good example of a Cold War nuclear legacy posture. Today the critical element of a survivable, reliable, and credible deterrent is the strategic nuclear submarines that are virtually invulnerable to enemy attack. The hundreds of submarine-based nuclear warheads left *in situ* would be more than adequate to maintain a reliable and credible deterrent after all land-based missiles have been de-alerted. NFU policies would help the two countries to walk back from this high-risk posture.

The launch of nuclear weapons on high alert by mistake, rogue launch, miscalculation of incoming information, or through system malfunction is low probability but high impact. Keeping nuclear weapons on high alert, ready for launch within minutes of warning of incoming missiles, creates the risk of a mistaken launch in response to a false warning. The national security adviser would have about three minutes in which to notify the president, who would have about ten minutes in which to decide how to respond. In the midst of a tense crisis generating fear and panic, against the reality of 15–30 minute flight times of incoming missiles, the president will be required to decide on authorizing the launch of

¹⁴⁸ Henry Sokolski, *Japan and South Korea May Soon Go Nuclear*, WALL STREET JOURNAL, May 8, 2016, available at <<http://www.wsj.com/articles/japan-and-south-korea-may-soon-go-nuclear-1462738914>>.

¹⁴⁹ Yonhap News Agency, *Nearly 60 Pct of S. Koreans Support Nuclear Armament: Poll*, September 23, 2016, available at <<http://english.yonhapnews.co.kr/national/2016/09/23/89/0301000000AEN20160923005300315F.html>>.

¹⁵⁰ This is not counting over 35 tonnes that Japan has in the United Kingdom and France.

¹⁵¹ "... not possessing, not producing and not permitting the introduction of nuclear weapons, in line with Japan's Peace Constitution"; Prime Minister Eisaku Sato, 11 December 1967, available at <<http://www.mofa.go.jp/policy/un/disarmament/nnp/>>.

¹⁵² Jacques E. C. Hymans, *Veto Players, Nuclear Energy, and Nonproliferation: Domestic Institutional Barriers to a Japanese Bomb*, INT'L SECURITY 36:2 (2011), at 154–189.

US nuclear bombs based on possibly confusing, contradictory, and false reports from early warning sensors.

In addition to the reinforced normative barrier against use, NFU and de-alerting would permit the dismantlement of vulnerable land-based warheads. A report by the Washington-based Nuclear Threat Initiative concluded that NATO's enhanced conventional capabilities "should be sufficient for credible deterrence in the east and flexible for other contingencies."¹⁵³ Perry makes a persuasive case for dismantling the US land-based nuclear forces.¹⁵⁴ Once the ICBMs are launched, he points out, they cannot be recalled. He recalls a false alarm about two hundred Soviet ICBMs from the 1970s, when he was the undersecretary for defence (research and engineering). The general who had telephoned the news quickly explained that it was a false alarm and they needed technical help to work out why the computer had malfunctioned. During the Cold War, the ICBMs served a dual purpose. The then-submarine-based nuclear force was not accurate enough and the ICBMs made up for that. The submarine force was also vulnerable back then to a disabling strike by the enemy. Today's SLBMs are highly accurate and invulnerable for the foreseeable future. But for insurance, the United States could retain a fleet of bombers. Perry concludes that the analysis holds true regardless of whether or not Russia reciprocates. If Moscow wants to enlarge its missile arsenal, he believes, it will merely damage its economy not affect US nuclear preparedness and relative strength.

In a matching study, Colonel B. Chance Saltzman of the US Air Force and colleagues calculated that the United States can meet all its national security and extended deterrence requirements with just 311 nuclear weapons: 192 single-warhead, hard to detect, and highly survivable and accurate SLBMs aboard 12 Ohio class submarines, each of which can hold 24 missiles; 100 single-warhead ICBMs; and 19 air-launched cruise missiles aboard stealth B-2 bombers.¹⁵⁵

D. UN High Level Conference on Nuclear Disarmament (2018)

One structured opportunity to reconcile the different streams of nuclear policy activities and dialogues will come at the UN High Level Conference on Nuclear Disarmament on 14–16 May 2018 as called for by the General Assembly (Resolution A/68/32, 5 December 2013). Like other high-level UN conferences, this will elevate the issue of nuclear disarmament in national policy priorities and the global agenda, garner widespread media attention, and mobilize civil society. It could also adopt declarations on no first use and sole purpose and reiterate the call for the negotiation of a Middle East WMD-free zone.

VII. CONCLUSION

After the vote on 7 July, in a joint press statement, the ambassadors of the three Western NWS—United States, Britain and France—said they had neither taken part in the negotiation of the treaty and nor did they "intend to sign, ratify or ever become party to it." In

¹⁵³ Simon Lunn, Isabelle Williams & Steve Andreasen, *NATO's Nuclear Future: Deter, Reassure, Engage?* (Washington DC: NTI, June 2016), p. I, available at <http://www.nti.org/media/documents/NATOs_Nuclear_Future_FINAL.pdf>.

¹⁵⁴ William J. Perry, *Why it's safe to scrap America's ICBMs*, N.Y. TIMES, September 30, 2016, available at <<http://www.nytimes.com/2016/09/30/opinion/why-its-safe-to-scrap-americas-icbms.html>>.

¹⁵⁵ James Wood Forsyth, B. Chance Saltzman & Gary Schaub, *Remembrance of Things Past: The Enduring Value of Nuclear Weapons*, STRATEGIC STUD. Q. Vol. 4, No. 1 (Spring 2010), at 74–89.

their judgment, the “initiative clearly disregards the realities of the international security environment” and does not address the security concerns which continue to make nuclear deterrence necessary. Accession to it would be “incompatible with the policy of nuclear deterrence, which has been essential to keeping the peace in Europe and North Asia for over 70 years.”¹⁵⁶ This seems to be exactly the wrong response likely to harden the NPT–NWPT divide and antagonize many non-NWS. If the argument of an adverse security environment can justify possession of nuclear weapons by the NWS, then why cannot the same argument hold for North Korea? On any objective reckoning, its security environment is far more threatening than that of France and the United Kingdom. As for the United States, given its previous rejection of the CTBT and the Ottawa Convention banning antipersonnel landmines, its stance on the NWPT will reinforce its reputation as a global outlier on multilateral arms control.

George Perkovich argues that “nuclear-armed states will not credibly meet their disarmament obligations unless and until they seriously define what a feasible, comprehensive, verifiable, and enforceable nuclear disarmament regime would entail.”¹⁵⁷ In the post-NWPT world, incremental steps so infinitesimal as to be invisible will no longer be sufficient to satisfy the world’s nuclear moral majority. Only a results-oriented NPT can implement the promise and the principle of permanence with accountability. If the NWS wish to rescue the NPT as the preferred framework and process, it is for them to demonstrate practical outcomes, through deeds not words, by bringing the step-by-step approach to some productive conclusions. A practical agenda for the nuclear-armed states would be to extend New START, commence negotiations on further warhead reductions, abandon modernization and upgrade plans, embrace no-first-use and de-alerting, remove tactical nuclear weapons from Europe, universalize the INF Treaty, ratify the CTBT, and negotiate an FMCT.

As of 2017 the ban treaty was the only practical and credible effort to fulfil the dream of a world freed at last of the existence of nuclear weapons that constitute an existential threat to humanity. The international community considered a ban treaty urgent, essential, and in prevailing circumstances the only practical way forward for achieving real disarmament. It should provide an impetus to efforts to an NWC that is universal, non-discriminatory, verifiable, and enforceable. Replicating the experience with chemical weapons,¹⁵⁸ actual elimination could be spread over more than a decade to ensure that decommissioning, dismantlement, and destruction of weapons and weapon-producing materials and infrastructure are carried out safely and securely.

¹⁵⁶ <<https://usun.state.gov/remarks/7892>>.

¹⁵⁷ Perkovich, *supra* note 10, at 16.

¹⁵⁸ See *THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES AND OPPORTUNITIES* (RAMESH Thakur & Ere Haru eds., 2006).

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CNWC Presents 2018 Achievement Award to Debbie Grisdale

Debbie Grisdale, a nurse who became a leading peace advocate in Canada and was executive director of Physicians for Global Survival for 23 years, was named winner of the 2018 Achievement Award presented by Canadians for a Nuclear Weapons Convention (CNWC).

Grisdale played a leading role in the Canadian campaign to ban landmines, which was instrumental in achieving an anti-personnel mine ban treaty in 1997, and has been a longtime advocate for the abolition of nuclear weapons. In her work for Physicians for Global Survival, she created “peace through health” programs and led the development of several coalitions and networks of NGOs working for disarmament.

“Her quiet, competent and visionary work, always in a steady manner, has inspired countless people in civil society movements,” said Ernie Regehr, Chairperson of CNWC.

Grisdale was the Anglican Church of Canada’s representative on the Governing Committee of Project Ploughshares from 2010-2017. Her work has also focussed on Indigenous concerns. She is a founding member and co-chair of the Anglican Diocese of Ottawa Working Group, “All My Relations,” which implements educational programming related to Indigenous concerns in the follow-up to the Truth and Reconciliation Commission.

From the founding of the Canadian Network to Abolish Nuclear Weapons, Grisdale has been a key policy developer. She played a leading role in the development of Canadians for a Nuclear Weapons Convention, a project of the Canadian Pugwash Group, supported by more than 1,000 recipients of the Order of Canada, who have urged the Government of Canada to take stronger action for nuclear disarmament.

Grisdale earned a Masters in Health Sciences in epidemiology and community health. For five years, she worked in community health development in Colombia, Ecuador and Nicaragua.

The CNWC Award will be presented to her at a reception October 1 at 6 pm at the Cartier Place Hotel, 180 Cooper Street, Ottawa.

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Contact: Sarah Bowles

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Two Physicians, Mary-Wynne Ashford and Jonathan Down 2019 CNWC Award Winners for Nuclear Disarmament Teaching

Two West Coast physicians, Mary-Wynne Ashford and Jonathan Down, will receive the Canadians for a Nuclear Weapons Convention (CNWC) 2019 Distinguished Achievement Award for their teaching on the medical and humanitarian consequences of nuclear war.

The two doctors, who reside in Victoria, B.C., formed a team in 2017 to give joint presentations to inform and energize students in classrooms on Vancouver Island, encouraging them to become involved in nuclear disarmament activities.

“Their teamwork approach is innovative and productive and worthy of being emulated throughout Canada,” said Ernie Regehr, CNWC Chairman. “We are giving this award to recognize them and also encourage similar programs across Canada to help young people understand the gravity of the nuclear weapons problem and how they can participate in nuclear disarmament groups.”

Dr. Ashford is a retired family physician and former Co-President of International Physicians for the Prevention of Nuclear War, which won the Nobel Peace Prize in 1985. She was a high school chemistry and English teacher before studying medicine. Her book, *Enough Blood Shed: 101 Solutions to Violence, Terror, and War*, has been translated into Japanese and Korean.

Dr. Down is a developmental paediatrician, a Clinical Assistant Professor in the Faculty of Medicine at the University of British Columbia. He is the incoming President of Physicians for Global Survival and a charter member of the Vancouver Island Peace and Disarmament Network.

Sandy Webster Worthy, former Curriculum Coordinator for Victoria Public Schools, in whose high school class Drs. Ashford and Down have appeared, described how students become “energized” on hearing the two doctors. “At first, they sit in stunned silence,” she said, “and then it’s like they want to pick up a torch and get activities going in their schools.” Another teacher, Mark Neufeld, who teaches global issues classes to high school students, said the Ashford-Down presentations were “remarkable” in helping young people grasp the realities of the threat to their existence.

The award will be presented to Drs. Ashford and Down September 26 at 6 pm at a reception at the Cartier Place Hotel, Ottawa.

Previous recipients of the CNWC Achievement Award are:

2011 Murray Thomson
2012 Bev Delong
2013 Fergus Watt
2014 Adele Buckley
2015 Paul Dewar
2016 Peggy Mason
2017 Metta Spencer
2018 Debbie Grisdale.

Contact: Sarah Bowles

Email and Phone number