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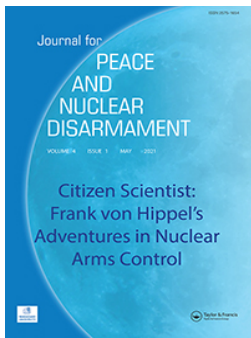
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## Universalising the TPNW: Challenges and Opportunities

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## Universalising the TPNW: Challenges and Opportunities

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### ABSTRACT

The Treaty on the Prohibition of Nuclear Weapons (TPNW) is a landmark agreement in the history of the nuclear disarmament movement. It was negotiated against the wishes of the nuclear-armed states and many of their supporters and this context defines the challenges and opportunities for its universalisation. We argue that universalisation should be understood as a strategy for maximising the authority of the treaty and its core norms and principles across four categories of state: disarmament advocacy states, a non-nuclear-armed state majority, nuclear client states, and nuclear-armed states. We show how these norms and principles are extensions of what already exists, particularly for non-nuclear armed states, but that making these connections will require targeted and sustained political work. We argue that states parties to the TPNW working with civil society will need to engage non-nuclear armed states with a range of normative arguments *for* the treaty and *against* the narratives of its critics. This can be done through a range of outreach activities based on other treaty universalisation campaigns, and we set these out in detail. Engaging nuclear client states and nuclear-armed states will be more difficult and require a different approach based on carving open a discursive space in which the TPNW's humanitarian, ethics, and risk rationales must be confronted. Political opposition will be formidable, but the purpose of the TPNW is to influence the nuclear weapons policies of nuclear-armed states, and increasing the authority of the treaty's norms and principles through universalisation strategies will be essential to this.

### ARTICLE HISTORY

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TPNW; nuclear disarmament; universalisation; norms

The Treaty on the Prohibition of Nuclear Weapons (TPNW) was negotiated in 2017 and entered into force on 22 January 2021, 90 days after Honduras became the 50th signatory to ratify the treaty in October 2020. Those 50 states and subsequent members are required under Article 12 on “Universality” to “encourage States not party to the Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty.” But what does it mean for members of the TPNW to pursue universalisation in the context of the global politics of nuclear disarmament? This article examines this question in three steps. First, it uses norm theory to explain why universalisation matters in relation to political authority, what universalisation means for the TPNW in the context of the politics of its negotiation, and what is being “universalised” in terms of the treaty’s core norms and principles. Second, the article

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argues that different states and regions will require different strategies to encourage and facilitate ratification and it outlines the narratives and activities needed to engage non-nuclear armed states to grow the treaty's membership. The final part outlines practices for engaging nuclear client states and, perhaps, nuclear-armed states.

## Why Universalise the Treaty?

### *Maximising the Treaty's Political Authority*

Universalisation of the TPNW should be understood as a strategy to maximise the authority of the treaty's norms and principles in order to influence the nuclear weapons policies of nuclear-armed states and "nuclear client states" – those states such as NATO members on behalf of whom nuclear deterrent threats are made by nuclear patrons – in the direction of nuclear disarmament. These states are, by definition, the ultimate target for the TPNW.<sup>1</sup>

This reflects a theory of change about state behaviour that emphasises the role of norms, identity and international law in shaping what, how and why states act as they do (see Katzenstein 1996). It is rooted in a much broader debate on state behaviour and the role of ideational factors like norms, compared to the role of material factors or domestic politics and the possibility of moral progress in world politics (Price 2008). This debate is rooted in competing understandings of power, interests and causality. Explanations of world politics that take ideational factors seriously have shown how change can be driven by contestation about norms, as Risse and Sikkink (1999) have shown in relation to human rights and Bower (2015) in relation to the Mine Ban Treaty.

The TPNW is an example of such a change that aims to precipitate *further* change. In this case, the legal and normative contestation that the treaty represents creates opportunities for the treaty to contribute to change in nuclear weapons policies by authorising, mobilising, and enabling states, NGOs, IGOs, corporations and others to act on the treaty's core norms and principles. The "contribute to" caveat is important because ideational factors do not determine outcomes, instead they "shape realms of possibility. They influence (increase or decrease) the probability of occurrence of certain courses of action" (Tannenwald 1999, 435).<sup>2</sup> Moreover, it is widely accepted by supporters of the TPNW that the treaty by itself is unlikely to lead to a world without nuclear weapons, but that an unequivocal legal-normative prohibition based on a reframing of nuclear weapons in terms of the humanitarian consequences of nuclear violence *is* an essential step towards that goal. The text of the treaty itself recognises that "a legally binding prohibition of nuclear weapons constitutes *an important contribution towards* the achievement and maintenance of a world free of nuclear weapons" (UNGA 2015, 2, emphasis added). Moreover, core states in the "humanitarian initiative on nuclear weapons" (see Kmentt 2015; Ritchie and Egeland 2018) that precipitated the TPNW purposefully framed a prohibition treaty as *an* not *the* "effective measure" relating to the obligation under

<sup>1</sup>We have used the term "nuclear client states" because more familiar terms like "umbrella states", 'extended deterrence states' and "nuclear alliance states" tend to imply an objective protective benefit for these states from the nuclear weapons of their nuclear patron, which is in fact contested.

<sup>2</sup>Tannenwald provides a useful introduction to the role of ideational and material factors in explaining choices on the use of nuclear weapons in the United States after 1945 in relation to the concept of a normative taboo

Article VI of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) to pursue “effective measures” for nuclear disarmament (New Agenda Coalition 2014).<sup>3</sup>

Critics of the treaty tend to frame universalisation not as a strategy to effect further change, but as an impossible-to-achieve goal of full global membership *as if* the treaty by itself will lead to global nuclear disarmament. They argue that universalisation in this sense of it being an “end” rather than a “means to an end” is not possible because the nuclear-armed states have rejected the treaty and therefore the treaty will fail on these terms. It is on this basis that the treaty’s supporters have been accused of “magical thinking” in terms of the TPNW somehow leading directly to nuclear disarmament (Ford 2018). Moreover, critics argue that the effect of ideational factors like norms and laws on the nuclear weapons policies of nuclear-armed states is very limited and will remain so (Onderco 2017, 7; Vilmer 2020). However, this concept of universalisation as an “end” isn’t very useful because it elides the highly contested context of the TPNW’s negotiation.

The TPNW and the humanitarian initiative emerged in response to the permanence of nuclear weapons in global politics, the lack of progress on nuclear disarmament and the systemic risk of nuclear war this entails. For a majority of non-nuclear armed states, the risks of the use of nuclear weapons and the scale of the humanitarian consequences that would follow make nuclear disarmament an urgent priority. They see the implementation of the obligations and commitments made by nuclear armed states to disarm as far from satisfactory or credible. With these states showing no indication of changing their stance on nuclear disarmament, non-nuclear-armed states came to see establishing an unequivocal prohibition of nuclear weapons as the only effective nuclear disarmament measure they could take themselves that could not be blocked by the nuclear-armed states. The TPNW can therefore be understood as a legal-normative challenge to the ways in which nuclear-armed states and their supporters continue to claim that nuclear weapons, nuclear deterrence and their potential use are legitimate and necessary. Unsurprisingly, the five states recognised as nuclear weapon states (NWS) under the NPT (US, Russia, France, China, UK) opposed this challenge (Ritchie 2019).

Thinking about universalisation in terms of a goal of full global membership therefore makes little sense, at least in the short-term, because the treaty is a *symptom* of a political context of deep division on the treaty’s main objective: nuclear disarmament. The very factors that drove the treaty’s negotiation are those that have led the nuclear-armed states and their supporters to reject it. States parties to the TPNW that encourage other states to join the treaty (as they have committed to do under Article 12), therefore promote an approach to nuclear weapons that all nuclear-armed states see as being in opposition to their current national security interests and political priorities. The TPNW is therefore different to treaties that have accrued near-universal membership, such as the Chemical Weapons Convention (CWC) negotiated in 1993 that banned chemical weapons, or the Montreal Protocol negotiated in 1987 to phase out and ban ozone-depleting chemicals, because the TPNW’s negotiation did not involve key centres of power in world politics, notably the US but also Russia, China, Japan, India and NATO-Europe. In contrast, negotiation of the CWC involved the

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<sup>3</sup>Article VI of the NPT states that “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control”.

world's major possessors of chemical weapons, especially the US and Russia, and the negotiation of the Montreal Protocol involved the world's major producers of ozone-depleting chemicals, such as the US, European Community, and Japan. Consequently, thinking about universalisation only in terms of an "end" of full global membership for the TPNW is unhelpful. Universalisation understood as a strategy to effect change by maximising the treaty's authority is much more relevant because it invites engagement with the politics and practices of spreading and embedding the authority of the treaty and its core norms, principles and rationales.

### ***Universalisation and Authority***

Even if the goal of full global membership is not on the cards in the near term, numbers still matter because a substantial and growing membership is at the heart of any strategy to increase the authority of the treaty. As Villiger argues in *Customary International Law and Treaties*: "The number of parties to a convention may indicate whether the State community regards the convention as the desirable law for its organization. This *political authority* increases with a greater number of States participating in the drafting of the convention and expressing themselves in favour of the draft . . . and finally accepting the instrument" (Villiger 1985, 148, emphasis in original). Generally speaking, then, the greater the number of states that accept a treaty's rules as authoritative over them, the greater the political authority of the treaty's principles, norms and obligations in world politics (Hirsch and Dixon 2020, 5).

If the community of states that has accepted the authority of a treaty remains relatively low *and* major centres of power remain outside it, then it will be open to contestation by those that disagree with and oppose the treaty. However, maximising the authority of a treaty through growing membership can increase the authority of its core norms and principles, even for those that contest and remain outside it (Bower 2015). This can mitigate the effects of contestation and attempts to delegitimise a treaty. On this basis, states that accept a treaty's norms, rules and obligations as legitimate and want to maximise their authority through a treaty should *therefore* sign and ratify it.

Moreover, the greater the authority of a treaty, the greater the political mandate to engage in activities to promote the treaty, its norms and obligations, which can include an obligation to work for a treaty's universalisation of the type stipulated in the TPNW. Such a mandate can be particularly important when a treaty's norms encounter resistance from powerful states, as is the case with the TPNW. Authority can then be leveraged to mobilise members, develop agendas, engage with hold-outs, and galvanise individual and collective actions based on a legitimate obligation to do so.

Universalisation as a strategy is therefore based on maximising the authority and therefore the effect of the treaty in world politics, and accruing membership is central to this: it increases the community of states that accept the treaty's norms and obligations as legitimate and a collective mandate to promote them under Article 12. It will, thus, be crucial for the treaty to see a steady growth of states joining it to maintain its momentum beyond its entry into legal force. For the TPNW, every additional ratification is an opportunity to demonstrate that a delegitimation of nuclear weapons and nuclear deterrence is taking place and that its norms and principles are taking root.

But the success of a universalisation strategy also goes beyond the quantitative and legal dimension of the number of treaty ratifications and encompasses the extent to which the authority of the treaty and its core norms and principles become embedded in national and world politics. Here, success is understood in terms of increased international pressure for the prohibition of nuclear weapons together with growing acceptance of the TPNW's underlying arguments about the unacceptable humanitarian consequences of nuclear use and the unavoidable risks of nuclear violence, leading to broad acceptance of the necessity of nuclear disarmament and the illegitimacy of nuclear weapons. Success in this sense is not limited to policy change in target states, but also about changing the terms of the debate itself through education, agenda-setting, advocacy, contestation and capacity-building.<sup>4</sup> In this broader sense, universalisation efforts as demanded by Article 12 of the TPNW are possibly the key aspect of its intended transformational effect.

It is here that increasing the authority of the treaty through ratifications can also have an important effect on what it means to be an NPT non-nuclear weapon state, and this can heighten the effect of the treaty on nuclear client states in particular. Key to this is the relationship between norms and identity. Finnemore and Sikkink outline the distinction between regulative norms “which order and constrain behavior”, and constitutive norms “which create new actors, interests, or categories of action” (Finnemore and Sikkink 1998, 891). Norms and principles of nuclear disarmament are both regulative and constitutive: they prescribe and proscribe certain behaviours but they also shape state identities, such as “non-nuclear weapon state”, “nuclear weapon state”, “rogue state”, “nuclear supplier state”, and so on. Universalisation of the TPNW is therefore not just about reinforcing and extending regulation (including prohibition), but about expanding what it means to be an NPT non-nuclear weapon state. The more NPT non-nuclear weapon states join the TPNW, the more its norms, principles and rationales become intertwined with what it means to *be* an NPT non-nuclear weapon state. It is at this level that we see the cognitive dissonance for nuclear client states who on the one hand identify as NPT non-nuclear weapon states committed to nuclear disarmament – the core aim of the TPNW – and on the other as supporters of nuclear deterrence and nuclear weapons. Groups and group identification matter in norm theory because evidence shows that compliance with norms relies on the extent to which others in a state's in-group also comply (Onderco 2017). International/group recognition as both a “responsible” NPT non-nuclear weapon state *and* a nuclear client state pulls these states in different directions. We know that conflicts between different normative systems generate tensions that can lead to change and this is where the TPNW can have an effect by foregrounding this normative and political tension and cognitive dissonance for client states (Sandholtz 2008).

In sum, universalisation as a strategy for maximising authority is a more nuanced way of understanding universalisation that takes the political context of the TPNW seriously. Moreover, it provides a coherent response to some critics of the TPNW who argue it will fail because its core norm of unconditional prohibition will not gain the support of *all* states, at least not in the short-term (Vilmer 2020). The diagnosis is right insofar as

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<sup>4</sup>The increase in international pressure through the mobilisation of discursive and institutional power by a large number of non-nuclear-armed states was a key indicator of the success of the humanitarian initiative (see Ritchie and Egeland 2018).



a norm of unconditional prohibition looks unlikely to sweep through the communities of nuclear-armed states and nuclear client states any time soon. But it limits the conception of “success” to universalisation as an end of full global membership and, in doing so, sidesteps the politics of the environment into which the TPNW emerged. Full universalisation via the accession of nuclear-armed and nuclear client states seems some way off *because* of the deep contestation between how we understand security in terms of nuclear disarmament and nuclear deterrence. The theory of change underpinning the TPNW is that the treaty will have an important effect on the systems of meaning that constitute nuclear weapons in nuclear-armed states and nuclear client states *because* of the authority of the new treaty and its norms and principles. What that effect will be remains to be seen. However, we can expect these efforts to be actively and vehemently opposed by sceptics of the treaty. This will necessarily have a significant bearing on universalisation strategies for the TPNW, explored below.

### ***The TPNW's Core Norms and Principles***

Before examining universalisation strategies, it is important to set out the TPNW's core norms and principles<sup>5</sup>, four of which, we argue, are the most significant in terms of the treaty's rationales:

- 1) A principle of the complete prohibition of nuclear weapons without conditions.
- 2) A principle of the unacceptability of indiscriminate nuclear violence.
- 3) A norm of progress towards nuclear disarmament and its realisation embedded in the NPT and the 1996 Advisory Opinion of the International Court of Justice (ICJ) on the legality of the use or threat of use of nuclear weapons.
- 4) A norm of remediation for harms caused by the past or future use of nuclear weapons, including nuclear tests.

1) The core principle of the TPNW is the complete prohibition of nuclear weapons *without conditions*. The NPT prohibits nuclear weapons for its non-nuclear weapon state members only. The five NPT NWS and other nuclear-armed states outside the treaty are not subject to such a prohibition. The NPT NWS have often claimed that this exemption grants them a “right” to nuclear weapons. In international humanitarian law (IHL), NWS exempted these weapons from the 1977 Additional Protocol I to the 1949 Geneva Conventions that sets out core obligations upon states regarding the treatment of civilians and combatants in warfare and constraints on violence according to customary principles of proportionality and discrimination (Bring and Reimann 1986, 103). On this basis, the TPNW was framed as filling a “legal gap” in the prohibition of weapons of mass destruction since there was no unequivocal and explicit prohibition of the development, use, production, transfer, and possession of nuclear weapons in international law comparable to chemical and biological weapons via the 1993 Chemical Weapons Convention and the 1972 Biological and Toxin Weapons Convention (BTWC) (Article 36/Reaching Critical Will 2015).

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<sup>5</sup>Norms refer to “collective expectations for the proper behaviour of actors with a given identity” (Katzenstein 1996, 5). Principles refer to “those beliefs of fact, causation and morality that collectively serve to promote a broader goal” (Tarzi 1998, 14).



2) The principle of the unacceptability of indiscriminate nuclear violence is made clear in the TPNW's preamble and Article 1(d) that prohibits both the use and threat of use of nuclear weapons because of the foreseeable humanitarian and environmental effects of widespread and indiscriminate violence through nuclear detonations. The treaty therefore represents an unequivocal rejection of a nuclear deterrence-based approach to national and world security in light of the consequences of nuclear weapons explosions and the risks of nuclear use inherent in nuclear deterrence postures, as well as of accidents, miscalculation and human and technical errors. The principle is legitimated through international humanitarian law, human rights law and environmental law captured in UN General Assembly resolution 1653 (1961) on a "Declaration on the Prohibition of the Use of Nuclear and Thermo-Nuclear Weapons". This declared any such use as "contrary to the rules of international law and to the laws of humanity" and "as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization". What is being universalised through this principle is a particular discourse about nuclear weapons in terms of what they do, what they mean, and modes of reasoning about violence and security that seek to stigmatise and criminalise the use and threat of use of nuclear weapons. In the language of rights, it is about a right to never be subjected to nuclear violence.

3) The norm of progress towards nuclear disarmament and its realisation is embedded in the NPT and ICJ's 1996 advisory opinion. The NPT contains three core normative obligations of non-proliferation, cooperation on peaceful uses of nuclear energy, and progress towards nuclear disarmament. The first two are widely accepted, institutionalised and supported by the world's major powers, particularly following the accession to the NPT of France, China, South Africa, Argentina, Brazil and the post-Soviet states in the 1990s. The normative obligation to *realise* nuclear disarmament was reinforced by the ICJ's opinion 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" (International Court of Justice 1996). The TPNW's preamble reaffirmed this language. Nevertheless, this norm is contested by the NWS in terms of urgency, the sequence of steps, and an obligation to plan for and achieve disarmament.

4) The norm of remediation for the harms caused by the prior or future use of nuclear weapons is reflected in Article 6 of the TPNW on victim assistance and environmental remediation. This obliges states parties to take "appropriate and necessary measures" to support people affected and redress environmental contamination caused by the use or testing of nuclear weapons under their jurisdiction or control. Article 7 also requires states parties to provide technical, material and financial support to other states affected by the use or testing of nuclear weapons where they are in a position to do so (see ICRC 2018). The norm of remediation for harms caused by weapons or violent practices subject to restrictions has emerged through so-called "humanitarian arms control" or "humanitarian disarmament" treaties over the past two decades. Positive obligations of this type are found in Article 6(3) of the Mine Ban Treaty (MBT), Article 5 of the Convention on Cluster Munitions (CCM), and Article 8(2) of the 2003 Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (Minor 2019). The MBT was the first such instrument to

embed these obligations, though victim assistance has a much longer heritage in humanitarian law and practice (Dunworth 2020).

Beyond these four, the TPNW also reinforces a wider set of norms and principles of nuclear behaviour that illustrate the extent to which it is embedded in a much broader regime complex.<sup>6</sup> These include: the NPT's norm of non-proliferation and the principle of the use of nuclear energy for peaceful purposes set out in the NPT and nuclear weapon-free zone (NWFZ) treaties; norms of nuclear prohibition at a regional level set out in NWFZ treaties; the nuclear testing prohibition norm set out in a range of treaties, not least the 1996 Comprehensive Test Ban Treaty (CTBT); norms and principles of international humanitarian law applicable in armed conflict (all referenced in the TPNW preamble); and the International Atomic Energy Agency (IAEA) safeguards regime (referenced in the TPNW's Article 3). For some states and NGOs, the TPNW also strengthens an emerging norm of financial divestment from activities and companies that support prohibited weapons.<sup>7</sup> Maximising the authority of the TPNW is therefore about strengthening its core norms and principles in world politics, as well as reinforcing this wider web of restraints and obligations affecting nuclear behaviour. It is also, by extension, about promoting and embedding a set of understandings about security, violence, and international law in relation to nuclear weapons.

Moreover, the fact that the TPNW is embedded in this wider web of norms and obligations opens the door to engaging with states, including those that currently oppose the treaty. Research on norms shows that states can accept and internalise norms and principles that connect to well-established values, that have been repeatedly emphasised as important over other, perhaps contradictory, norms, and when they already adhere to similar norms (Rublee 2009). For example, nuclear client states that oppose the TPNW already accept some of the treaty's norms and principles in relation to nuclear weapons, for example the norm of nuclear weapons abstinence, as well as many of its other norms in related contexts, if not yet in relation to nuclear weapons, for example, the norm of unconditional prohibition of other weapons of mass destruction through the CWC and BTWC. This is important because norms can have an effect on sceptical or resistant states when they are linked with other widely accepted normative ideas (Krook and True 2010, 111).

## Approaches to Universalisation with Non-nuclear-armed States

Maximising the authority of the treaty through more ratifications will require different approaches for different states. We identify four communities of states: nuclear-armed states; nuclear client states; non-nuclear armed states that can be

<sup>6</sup>Lantis and Wunderlich's work on "norm clusters" as "similarly aligned, coupled norms or principles" is relevant here. These are distinct but "speak to a common issue area and might be conceptually interlinked" and "may be cast into dense institutionalised structures in the form of international regimes" and embedded in wider international institutional and legal networks (Lantis and Wunderlich 2018, pp. 576, 578). Fukuda-Parr and Hulme similarly describe "supernorms" as "carefully structured sets of interrelated norms that pursue a grand prescriptive goal" and are "grouped into a unified and coherent framework", such as a "supernorm" of nuclear disarmament as a "grand prescriptive goal" comprising a much broader set of interrelated norms, some of which are captured in the TPNW (Fukuda-Parr and Hulme 2011, 31).

<sup>7</sup>The obligation in Article 1(e) to never "Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty" has been interpreted by some to mean that financing companies that produce or support nuclear weapons is prohibited as a form of assistance. Inclusion of a specific reference to financing was debated during the TPNW negotiations, but it did not make the final draft (Beenes and Snyder 2017).

supportive of or ambivalent about nuclear disarmament; and non-nuclear armed states that are champions of nuclear disarmament, what Marianne Hanson called the “advocacy states” (Hanson 2010).<sup>8</sup> Given context of the TPNW’s negotiation and opposition from nuclear-armed and client states, the focus of universalisation efforts after entry into force will initially be on advocacy states, other non-nuclear armed states, and perhaps a small number of nuclear client states. In the longer term, the TPNW contains provisions for wider universalisation through adoption by nuclear-armed states via pathways for the renunciation of nuclear weapons set out in Article 4.

TPNW supporters and TPNW stakeholders will have different roles to fulfil. The role of civil society in promoting universalisation of the TPNW will remain essential in advancing the treaty’s arguments in national and international discourse. The success of universalisation efforts by the TPNW member states will depend on complementary and even closely coordinated civil society campaign activities and strategies. A 2008 study by Oberdorster supports the importance of normative arguments and working with civil society, as well as embedding the case for the TPNW in the wider UN, NPT and IHL institutional architecture in order to secure further ratifications (Oberdorster 2008, 684).<sup>9</sup>

The TPNW’s Article 12 obligation, however, applies to states parties, and it is these that will have to devise strategies for engagement at governmental level with those states that have yet to join. The disarmament advocacy states will have an important role to play here. These strategies will be based on a set of narratives and practical activities that draw on universalisation experiences with similar treaties. For example, McLaughlin (2009, 65) identified in relation to the BTWC five reasons why states had yet to ratify it that provide lessons for the TPNW. These were: “1) Lack of awareness/information deficit; 2) Misunderstandings of the Convention, its provisions, implications and relation to other security, disarmament and non-proliferation treaties; 3) Resource burden; 4) Lack of political will and other competing priorities; 5) Constitutional/organizational difficulties (including parliamentary session interruptions, political upheavals and instability, and lack of relevant departments to deal with the issue).” Persuasion, argument and engagement will therefore be central to the process, especially with more authoritarian states that, by definition, tend to restrict political space for civil society engagement, resist the efforts of transnational advocacy networks and be less tolerant of political opposition. Narratives and practices for TPNW universalisation are outlined in the following sections.

### ***Non-nuclear Armed States: Promoting a Positive Discourse***

Increasing support for the treaty through further ratifications by non-nuclear-armed states will take political work. For these states, the pursuit of nuclear weapons is already prohibited under the NPT and they will essentially be doubling-up on their existing legal

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<sup>8</sup>Hanson defines these as “often small- or middle-sized nations, sometimes known as ‘Middle Powers’” that have “been instrumental in stimulating a strong civil society sector, ranging from mass-appeal nongovernmental organizations (NGOs) to think tanks and academic institutions supportive of the elimination of nuclear weapons” Hanson (2010, 72). For the humanitarian initiative and TPNW they include Austria, Ireland, Mexico, New Zealand, Norway, Switzerland and South Africa.

<sup>9</sup>The literature on transnational advocacy networks further illustrates this point (see Keck and Sikkink 1999; Price 2003).

obligations by ratifying the TPNW. The vast majority of these states – over 150 of the 193 member States of the UN – have no nuclear weapons, are not allied to a nuclear-armed state, are members of the NPT, and have a comprehensive safeguards agreement (CSA) in place with the International Atomic Energy Agency (IAEA). 115 of these states are members of a NWFZ and have already prohibited nuclear weapons within the territory of their zone, including the development, acquisition, possession, placement, testing and use of such weapons.<sup>10</sup> Most of these states also have a longstanding track record of supporting nuclear disarmament and an unconditional prohibition of nuclear weapons through statements in international fora and votes on UN General Assembly resolutions (Potter and Mukhatzhanova 2011). Moreover, 138 of these states supported the Austrian government’s “Humanitarian Pledge” in 2014<sup>11</sup> to “stigmatise, prohibit and eliminate nuclear weapons”, that made a significant contribution to the negotiation of the TPNW. Hence, the additional legal and administrative obligations resulting from joining the TPNW are easy to fulfil for non-nuclear armed states and the treaty is also in line with their traditional national positions on nuclear disarmament.

At the same time, many non-nuclear armed states are small and/or developing countries that could find it difficult to withstand the political pressure and forceful opposition against the TPNW from some of the world’s most powerful states. Moreover, nuclear disarmament is not necessarily a domestic political priority for many of these states amid many other urgent issues. The opposite is true of nuclear-armed states that vehemently oppose the TPNW and its challenge to what they consider their core interests and special status. Some non-nuclear armed states may therefore be supportive of the TPNW but nevertheless reluctant to join the treaty given the risks of adversely affecting their relations with TPNW opponents. Hathway (2005, 500–506) calls these anticipated “collateral consequences” of ratification. These arise from the expected reactions of domestic and international opponents of ratification that can influence a state’s decision to join a treaty. These can be consequences for foreign aid, domestic political support, trade, diplomatic initiatives and so on. Raising and keeping the TPNW and its universalisation as high as possible on the political agenda will, thus, be a key challenge for supporters of the treaty.

Making the case for the importance of the TPNW to potential new members will require effective ways of appealing to a sense of responsibility that emphasises the importance of *them* joining the treaty. This will be rooted in political arguments based on the importance of the treaty in world politics. Narratives in support of universalisation for non-nuclear-armed states will take two forms that are rooted in the TPNW’s core norms and principles but oriented towards the politics of joining the treaty: first, explaining the important *positive* contribution of the TPNW to the goal of nuclear disarmament *and* the positive contribution each state can make by joining the treaty; second, addressing the *negative* counternarrative against the TPNW to assist non-nuclear armed states in withstanding political campaigns they are likely to encounter from TPNW opponents (see Sanders-Zakre 2017). This section sets out four key arguments about the positive contribution of the TPNW. These have already been articulated

<sup>10</sup>For details, see United Nations Office for Disarmament Affairs fact sheet on NWFZs <<https://front.un-arm.org/wp-content/uploads/2020/07/NWFZ-Fact-Sheet-July2020.pdf>>.

<sup>11</sup>127 signed up and/or endorsed to the Humanitarian Pledge issued by Austria in 2014. A further 11 States vote in support of the UN General Assembly Resolution on the “Humanitarian Pledge” in 2015 (see UNGA 2015).

but will require frequent reiteration and development (see, for example, Acheson 2018; Nystuen, Egeland, and Hugo 2018b).

The first key argument is that the unequivocal prohibition of nuclear weapons creates the necessary legal framework for additional nuclear disarmament steps. The ratification of each additional state increases the authority of the treaty and normative and political pressure on the nuclear-armed states to take such steps. It also increases the pressure on nuclear client states regarding their stance on nuclear weapons and nuclear deterrence. The greater the number of TPNW members, the greater the demand to prioritise progress on nuclear disarmament. As NPT NWS have failed to live up to their disarmament commitments, supporting the TPNW constitutes a concrete step through which a non-nuclear armed state can contribute to the implementation of Article VI of the NPT and Action 1 of the 2010 NPT Action Plan, which called on “all States parties (...) to pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons” (UN 2010).

Secondly, by ratifying the TPNW a state makes an important contribution to strengthening the delegitimation of nuclear weapons, which is crucial to preventing further proliferation (see Ritchie 2013). It is very difficult to counter the further proliferation of nuclear weapons in the long run effectively whilst some of the world’s most powerful states continue to stress the necessity and legitimacy of these weapons, as the policies of nuclear-armed states and their clients routinely imply and demonstrate (Rathbun 2006). Without strong counterarguments and collective political pressure, the view that nuclear weapons are necessary and legitimate will be difficult to dislodge. The TPNW’s humanitarian rationales and its norms and principles provide such counterarguments. By prohibiting these weapons and stigmatising them as morally indefensible and *detrimental* to principle of “undiminished security for all”<sup>12</sup> the TPNW expands and embeds the illegitimacy of nuclear weapons and the practice of nuclear deterrence. In this sense, the TPNW is a much-needed legal-normative reinforcement of both nuclear non-proliferation and disarmament efforts at a time when credible leadership on nuclear disarmament by states that rely on these weapons is not forthcoming and when multi-lateral approaches to transnational security challenges need reinvigorating.

Thirdly, by ratifying the TPNW, states have the opportunity to support the *democratisation* of the global nuclear weapons debate. The TPNW represents a major step towards democratisation through an inclusive participatory process that was “open to all but blockable by none” (Johnson 2014) and through sovereign equality in the treaty text. On the former, the treaty was authorised and developed through the UN General Assembly, the central democratic body of the United Nations, and negotiated under the auspices of the UN with extensive involvement of civil society. On the latter, the treaty unequivocally prohibits nuclear weapons without exemptions or granting a special status on any issue to any actor or category of actors. It does not discriminate between nuclear armed states and non-nuclear armed states, as the NPT does. Moreover, the re-framing of

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<sup>12</sup>This principle has been a staple of NPT and UN disarmament discourse. It does not feature in the text of the NPT, but it does feature in subsequent Review Conference final documents. An early version can be found in the final outcome document of the 1978 UN Special Session on Disarmament in relation to the pursuit of “equitable and balanced” disarmament measures that “ensure the right of each State to security and to ensure that no individual State or group of States may obtain advantages over others at any stage. At each stage the objective should be undiminished security at the lowest possible level of armaments and military forces” (UN 1978, 6).

nuclear weapons as a global human security issue rather than a national state security matter between nuclear-armed states has given significant agency to a much broader group of states and other stakeholders, all of whom would be deeply affected by a nuclear war. The TPNW represents and legitimises an expectation that the threat to the survival of human civilisation posed by nuclear weapons is not and should not be the exclusive domain of nuclear-armed states according to their own national security prerogatives. As Shorna-Kay Richards, Deputy Permanent Representative of Jamaica to the UN, argued in 2016, the “principles of equality and justice are at the core” of the humanitarian approach that had demonstrated “that the non-nuclear weapons States have a say in nuclear disarmament issues. Our voice matters. We have agency” (Richards 2016). These non-nuclear-armed state perspectives predate the TPNW but have largely been ignored in the multilateral frameworks that deal with nuclear weapons, as Dan Plesch has shown (2016). Every ratification of the treaty reinforces the democratisation of the global nuclear weapons debate.

A fourth key argument is the opportunity provided by the TPNW’s to challenge the value of nuclear weapons and nuclear deterrence for nuclear-armed states and their clients. These states have not provided answers or commented in any detail on the key issues raised in the context of the humanitarian initiative and the negotiation of the TPNW. The humanitarian initiative and TPNW highlighted the humanitarian consequences and risks associated with the use of nuclear weapons and the practices of nuclear deterrence, and showed they are graver and more complex than previously understood. Yet there has been no substantive engagement with questions concerning the legitimacy and credibility of nuclear deterrence or the veracity of its assumptions in light of this knowledge. Questions about what level of aggregate global nuclear risks and what in terms of humanitarian consequences is acceptable and for whom have so far been left unanswered. Arguably, the lack of engagement on these legitimate questions is due to a lack of valid counterarguments by nuclear-armed states and their supporters. A more detailed conversation would inevitably entail admitting that the impact of nuclear weapons explosions would affect not only one’s own and the adversary’s populations, but also the populations of innocent bystander states. It would reveal a willingness to accept these effects on third states and potentially on all of humanity as a “necessary collateral” to maintaining a system of security based on nuclear deterrence. The more states that join the TPNW, the more pressure for exactly this kind of engagement will be generated and the more untenable the arguments in favour of maintaining policies of nuclear deterrence are likely to become (Kmentt 2020).

These outcomes from joining the TPNW can be framed as four key social goods that the treaty provides: a legal framework for future steps; reinforcing nuclear disarmament and non-proliferation through the delegitimation of nuclear weapons; contributing to the democratisation of global nuclear politics; and providing opportunities for engagement with nuclear-armed states and their clients on the humanitarian agenda. It makes sense for states concerned with the lack of progress towards the shared goal of nuclear disarmament to support the TPNW on this basis. Evidently, these central positive messages in support of the TPNW should be made to all states, including the nuclear-armed and their supporters. However, these messages are much more likely to resonate in the first instance with non-nuclear armed states. Moreover, from a normative perspective there is an obligation upon many of these states to support the TPNW *because*



they have already accepted the treaty's norms, rules and obligations as legitimate and want to maximise their authority, as noted above.

### ***Non-nuclear-armed States: Outreach and Engagement***

A positive narrative that clearly frames both the importance of the TPNW and the value for each non-nuclear-armed state in joining it will be central to growing the treaty's membership. This narrative must be rooted in the positive effects of increasing the authority of the treaty, its core norms and principles, and its humanitarian, risk and ethical rationales. But universalisation strategies will also require a range of practical outreach and engagement activities that mobilise the case for joining the TPNW. This will need to be led by the nuclear disarmament advocacy states working closely with civil society.

Other humanitarian disarmament treaties, such as the 1997 MBT and the 2008 CCM provide useful ideas for practical universalisation efforts through universalisation ambassadors, coordinators and contact groups. The MBT, for example, was supported by an informal universalisation contact group, comprised of states parties, the ICRC and the International Campaign to Ban Landmines (ICBL). Different stakeholders exchanged information about activities they had undertaken and were planning in different states. The group served as a forum where universalisation efforts could be planned, coordinated and made more effective. It also fostered a common sense of purpose and a culture of collaboration and coordination between member states and civil society organisations. The activities of the contact group were reported by its coordinator to the Meeting of States Parties, where formal decisions relating to the universalisation of the MBT were taken and universalisation activities were endorsed and encouraged. States parties of the MBT also designated personalities to undertake universalisation efforts in support of the treaty at high level.<sup>13</sup> The first Review Conference of the MBT in 2004 adopted an Action Plan, the first section of which was dedicated to treaty universalisation based on seven commitments (Nairobi Action Plan 2004). This practice was followed up by similar commitments in subsequent meetings of States Parties.

The CCM contains a similar provision on universalisation to the TPNW.<sup>14</sup> States parties to the CCM adopted the "Vientiane Action Plan" at its first Meeting of States Parties in 2010. Its first section was devoted to promoting the universalisation of the Convention (Vientiane Action Plan 2010). This served as a road map until the First Review Conference in 2015, which adopted another Action Plan covering the subsequent five-year period (Dubrovnik Action Plan 2015). In the CCM, two states parties act as formal coordinators for universalisation. To facilitate the coordination of universalisation activities, an Informal Working Group on CCM universalisation was established, which operates in a similar fashion to the MBT contact group.

The TPNW states parties could chose to follow similar approaches to coordinate universalisation activities by establishing either a more informal contact group or by formally designating universalisation coordinators. States parties could also commit to

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<sup>13</sup>HRH Prince Mired Raad Al-Hussein of Jordan, HRH Princess Astrid of Belgium and Colombian music artist and anti-landmines activist, Juanes, made such commitments.

<sup>14</sup>Article 21 (1) of the CCM stipulates that "Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention".



specific actions to foster universalisation through decisions taken at TPNW Meetings of States parties. These different options will certainly be discussed in some detail at the first Meeting of States Parties of the TPNW and could be incorporated into an action plan. In any case, a close coordination of universalisation efforts will be one of the key elements for growing the treaty's membership.

The *classical* form in which to make the case for the TPNW to non-states parties is through diplomatic outreach activities by TPNW members. This can be done in a variety of ways. TPNW states can undertake diplomatic demarches, either on their own or in a group of TPNW supporters, in capitals of non-states parties, impressing upon the recipient of the demarche the value of the treaty and the political importance of their signature and ratification. Group demarches can be conducted in a cross-regional format with states parties from different parts of the globe to underscore the universal value of a prohibition of nuclear weapons. A demarche from states parties from the same region can also be an effective format, given the closer political ties between states from the same region, especially where the region is a formal nuclear weapon-free zone. What's important here is that TPNW members listen to and constructively engage with the concerns of non-nuclear armed states that have yet to join the treaty, especially around the "collateral consequences" of ratification referred to above. As McLaughlin observed in relation to the BTWC, "Answering the specific concerns identified by non-States parties is imperative in demonstrating that States Parties place importance on the Convention and that they are taking each and every country seriously" McLaughlin (2009, 68).

States parties can promote universalisation by raising the TPNW in communications between high-level officials from TPNW states and non-states parties. Bilateral political meetings, for example between heads of state or at ministerial level, or in letters and phone calls are examples for such opportunities. Ideally, these activities in different non-states parties would be coordinated among TPNW supporters. The more the TPNW is raised at the political level, the more effectively its importance and the weight of expectation and encouragement to sign and ratify the treaty can be communicated.

TPNW supporters can also coordinate efforts to highlight the importance of the TPNW in political communiques and resolutions, for example at regional meetings. Such documents are usually political statements without a legally binding character, but they provide political cover for non-states parties to express support for the TPNW and move towards signature and ratification. In addition, joint regional or cross-regional statements in multilateral fora in support of the TPNW can be effective in bringing states closer to the TPNW short of joining the treaty, perhaps as observer states.

Universalisation of the TPNW can also be supported by increasing the number of states voting in favour of the relevant resolutions before the UN General Assembly. Such yes-votes are an important way of signalling political support and a potential stepping-stone for states to move towards joining the TPNW. In 2020, for example, the resolution on the TPNW at the UN General Assembly First Committee received 130 votes in favour (Assembly 2020).<sup>15</sup> Support for this resolution will be an important indication of support for the treaty and momentum behind universalisation efforts. States parties as well as NGOs will undoubtedly try to convince more states to support this resolution.

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<sup>15</sup>Voting results available at <<https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com20/votes-ga/399DR11.pdf>>.

Some states with more limited resources would benefit significantly from technical support for the ratification process. This can be provided through capacity building activities, such as workshops and seminars, to explain the provisions of the TPNW in detail and help clarify the steps a prospective state party would have to undertake to implement the treaty. Again, the MBT and the CCM, as well as the 2014 Arms Trade Treaty (ATT)<sup>16</sup> provide useful examples for capacity building efforts to facilitate the implementation of these treaties and promote their universalisation. Legislation toolkits and model laws can also provide valuable assistance to states to simplify the domestic ratification process. Such a model law for the TPNW was prepared by the ICRC in 2019 and a guide to TPNW signature and ratification was provided by the United Nations Office for Disarmament Affairs (ICRC 2018; UNODA 2017).

International conferences and regional workshops and seminars as well as the commissioning of studies and publications to promote the case for the TPNW are important ways to raise awareness of the treaty. These were key features of universalisation efforts for the MBT and the CCM for which a large number of such meetings have taken place.<sup>17</sup> On the one hand, such meetings facilitate treaty implementation among its members. On the other hand, they help to raise political attention within a region and create incentives and pressure on non-members to join. Future meetings of states parties of the TPNW will provide key venues and opportunities to raise awareness and political attention on the treaty and, in particular, to highlight the positive arguments in support of the treaty and for each non-nuclear-armed state to join it outlined above. Universalisation efforts will be helped by more regional and international activities to refocus nuclear weapons discourse on the humanitarian impact of nuclear weapons detonations and thereby make the case for the TPNW. These could be organised through NWFZ organisations such as OPANAL (the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean) to encourage accession on a regional NWFZ basis.

International conferences, regional workshops, and research reports were also key features of the processes that generated awareness of and support for the humanitarian initiative and later the negotiation of the TPNW. However, there is the important practical issue of financial resources for these activities for universalising the treaty. In the case of the MBT and the CCM, for example, Western states, such as Norway, Germany or Canada predominantly organised and financed events to support these treaties either directly or through funding of NGOs. Most of these states at the time of writing oppose the TPNW, but this could change. The financial resources that will be available to finance activities to promote the universalisation of the TPNW and to support NGO activities are, thus, likely to be much more limited. This situation will almost certainly be further exacerbated by budgetary pressures in TPNW states parties in the wake of the Covid-19 pandemic. The TPNW states parties' implementation of Article 12 is therefore likely to focus on existing multilateral and regional fora, such as the UN General Assembly and regional and sub-regional organisations.

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<sup>16</sup>For more information on the Arms Trade Treaty, see <<https://thearmstradetreaty.org/>>.

<sup>17</sup>For more information on regional meetings and workshops see for the MBT <<https://www.apminebanconvention.org/>> and for the CCM <<https://www.clusterconvention.org/>>.

## Engaging with Nuclear Client States

So far we have focussed on growing the membership of non-nuclear-armed states. But states parties to the treaty, especially the nuclear disarmament advocacy states, must also engage with nuclear client states and, where possible, nuclear-armed states. These two groups remain committed to nuclear weapons and nuclear deterrence. The five NPT NWS, NATO, as well as individual NATO members have clearly stated their opposition to the TPNW. Engaging the nuclear-armed states on the TPNW will be very difficult for the time being, but engaging nuclear client states in ways that encourage accession to the treaty holds more promise. This will require some similar forms of outreach to those outlined above, but the discursive engagement will be different in two ways that we outline here: first, in terms of rebuking a set of negative arguments about the TPNW; and, second, in terms of stimulating debate in nuclear client states on the humanitarian, risk and ethical rationales underpinning the TPNW.

### *Countering the Negative Discourse*

Critics of the TPNW have framed the TPNW in a negative way as problematic (Ford 2017; Highsmith and Stewart 2018; Vilmer 2020). Countering these arguments will be important for non-nuclear-armed states *and* nuclear client states, but they hold more sway in the capitals of the latter (similarly, engaging nuclear client states with the positive arguments in support of TPNW outlined above will also be important). Four negative arguments in particular have been articulated. We argue that though they lack merit, they have substantial power because of the power of those articulating them.

The first argument is that the TPNW is a distraction from a practical and tested step-by-step nuclear disarmament approach. This is straight-forward to rebuke because the TPNW cannot distract from steps that are not being taken by nuclear-armed states. The action plans agreed by consensus at the NPT Review Conferences of 2000 and 2010 are withering on the vine. The goal of the TPNW is to create a sharper focus for such steps to actually be taken. Moreover, the idea that there exists comprehensive “step-by-step” plan for nuclear disarmament as an *alternative* to the TPNW is itself misleading. Nuclear disarmament both as an objective and as a process has been widely contested for many decades. The TPNW and its supporters do not argue that nuclear disarmament can or will happen overnight. If nuclear weapons are successfully eliminated from human affairs, the process will undoubtedly unfold in a series of steps, some of which are likely to be organised and some organic and serendipitous. A comprehensive set of prohibitions represented by the TPNW is a crucial part of the process, but it is not in competition with an alternative plan, since no such plan exists.<sup>18</sup> What it *is* in competition with is a set of deeply embedded ideas held by powerful states about the necessity and legitimacy of nuclear weapons and, potentially, very extreme levels of nuclear violence.

Second, the TPNW (and its supporters) are accused of sowing divisions in the international community on the nuclear weapons issue. Such divisions, however, are not created by the TPNW but are a result of the lack of implementation of the NPT’s

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<sup>18</sup>Kjolv Egeland (2020b) deconstructs the nostalgic view that a consensus emerged after the Cold War on both the objective of nuclear disarmament and a blueprint to get there that has somehow been lost, must now be recovered, and that the TPNW distracts from that endeavour, concluding that it never existed in the first place.

Article VI by the NWS. The TPNW is intended to address this. The accusation of division also comes from those states that refused to engage on the issue of the humanitarian consequences of nuclear weapons and in the TPNW process. Moreover, debate, division, and contestation are vital to processes of change and a necessary feature of democratic debate in nuclear politics to which the TPNW makes a vital contribution (Egeland 2017).

Third, opponents also allege the inefficacy of the TPNW because nuclear-armed states collectively oppose the treaty. In their view, as noted above, the TPNW will not contribute to or lead to the elimination of nuclear weapons (Sagan and Valentino 2017). Apart from the redundancy and circularity of this argument, the TPNW *does* create the legal basis for nuclear disarmament. Moreover, we cannot know in advance how effective the treaty will be over the long term. Evidence from other humanitarian disarmament treaties (such as the MBT) and other nuclear initiatives (such as the movement against nuclear testing) certainly suggests that significant change is possible (Bolton, Njeri, and Benjamin-Britton 2020). The treaty's effectiveness, as argued above, will be a function of the strength of its core norms and principles and the discourse this will stimulate about the treaty's underlying humanitarian, risk and ethical arguments in relation to nuclear weapons and nuclear deterrence.<sup>19</sup> The treaty's challenge to the legality and legitimacy of nuclear weapons therefore has the potential of impacting nuclear weapon-related policies.

A fourth frequently voiced criticism is that the TPNW is based only on humanitarian arguments and does not take the international security environment into account. This presumes quite a narrow framework for deciding what counts as security and what does not. In fact, the TPNW is the result of legitimate security concerns based on threat perceptions stemming from the risk of the use of nuclear weapons due to the collective reliance on nuclear deterrence by nuclear armed states and their clients. This is not merely a humanitarian but a valid and pertinent security perspective. Opponents of the TPNW neither own the exclusive right to interpret the NPT (see below) nor are they the sole arbiter of what counts as security and whose security perspectives are more valid than others. Moreover, the corollary of this argument is that one must wait for an idealised future security environment in which nuclear deterrence is no longer deemed necessary as a precondition for nuclear disarmament. This is disingenuous. There will always be real or perceived security imbalances between states, which, if one follows this line of argument, will provide excuses in perpetuity to sustain the nuclear status quo (Ritchie 2017).

Fifth, some have postulated that the TPNW is incompatible with the NPT. TPNW supporters possibly see this as the most disingenuous argument against the TPNW because this point is raised by those states whose own lacklustre implementation of nuclear disarmament under the NPT is the reason why the humanitarian initiative and the TPNW processes were initiated in the first place. Moreover, the negotiations of the TPNW were marked by utmost care to ensure that the TPNW aligns with existing nuclear disarmament and non-proliferation agreements, especially the NPT. The treaty explicitly and structurally fits into the framework created by the NPT and constitutes

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<sup>19</sup>Recent arguments against the recapitalisation of the US ICBM arsenal based on the unacceptable climatic effects of a nuclear war that involved the use, or the destruction of those missiles on their silos with Russian nuclear weapons, are a useful case in point (Clarke and Andreasen 2021).

a necessary and effective measure for the implementation of its Article VI and of Action 1 of the 2010 NPT Action Plan (Hajnoczi 2020).

We recognise that nuclear disarmament will be a difficult process and it is self-evidently debatable as to how or whether the TPNW can make a significant contribution, but the idea that the TPNW is *itself* a problem in relation to the NPT, to security, or to what it might or might not achieve is misplaced. These and other criticisms of the TPNW do not stand up to scrutiny and/or cannot be substantiated (see Soares 2018). Rather, they are the expressions of a politically motivated counternarrative from states that object to the TPNW because of the challenge it presents to the nuclear status quo. States that consider joining the TPNW, and constituencies supportive of the TPNW within states that are not, will have to be equipped with these arguments to counter these familiar criticisms.

### ***Opening up the Humanitarian Discourse in Nuclear Client States***

Beyond debunking these criticisms, the most effective strategy for nuclear client states will be to use the discussion on the TPNW as a lever to highlight the humanitarian consequences of nuclear weapons, the risks associated with these weapons and the legal and ethical questions regarding the use and the threat of use of nuclear weapons and the practice of nuclear deterrence. This discourse can be legitimately demanded and conducted whether one agrees or disagrees with the legal dimension of the TPNW. Recent analysis on the consequences of nuclear explosions and nuclear risks are based on empirically demonstrable facts and raise very serious issues about responsibility, legitimacy and what collective security means in the context of the nuclear weapons and nuclear deterrence (Borrie, Caughley, and Wan 2017). Ultimately, a serious engagement with the TPNW and its underlying rationale leads to a conversation about the veracity of the assumptions on which a nuclear deterrence-based security architecture is based. In this discussion, the gravity of the consequences and the complexity of risks of the use of nuclear weapons can be weighed against the posited security benefit of nuclear weapons. The TPNW poses the question about the *balance of probability* between the belief that nuclear weapons deter and prevent large-scale wars and the knowledge that deterrence, including nuclear deterrence, can fail and the foreseeable catastrophic humanitarian and other consequences that would follow. Any discussion on the TPNW with nuclear client states and nuclear-armed states will offer opportunities to highlight and advance these arguments.

The extent to which such a broad debate can be stimulated will vary between countries. The role of civil society to demand and facilitate this engagement will be vital and their critical voice will certainly be heard more in democratic societies than in autocratic ones. It is likely that public discourse in nuclear client states where there is scepticism towards nuclear weapons will be most open to the humanitarian consequences and risk arguments (ICAN 2018). In some of these states, the contradictions between professed support for a world without nuclear weapons and the desire and declared priority of defending the credibility of multilateralism and international law<sup>20</sup> on the one hand, and the actual policies of reliance on nuclear deterrence on the other will likely become more apparent.

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<sup>20</sup>See for example the "Alliance for Multilateralism" at <<https://multilateralism.org>> established in 2019 by France and Germany, in which most nuclear-armed client states participate.

A key issue that will have to be addressed in many nuclear client states, is the relationship between the TPNW and obligations within NATO. NATO has stated on several occasions its opposition to the TPNW based, *inter alia*, on the counterarguments outlined above (for example NATO 2020). This reflects a concern in NATO about the profound implications of the TPNW for the legitimacy of nuclear weapons and the practice of nuclear deterrence.<sup>21</sup> By continuously expressing opposition to the TPNW, NATO seeks to make it politically difficult, if not impossible, for allies to soften their position on the treaty. Any such change would be portrayed as a breach of alliance solidarity and cohesion.

Supporters of the TPNW will have to underscore in the domestic debate within NATO allies that NATO membership is, as such, not dependent on agreement with or participation in nuclear deterrence policies. Nuclear deterrence is not addressed in the North Atlantic Treaty and taking part in NATO's nuclear activities is not a legal requirement for membership. In fact, it was only in 2010 that NATO first referred to itself as a "nuclear alliance" (Kjølvs Egeland 2020a; NATO 2010, 5). Opposition to the TPNW is, thus, a political choice but "(...) NATO member states bear no legal obligation to support extended nuclear deterrence or the retention of nuclear weapons. From a legal point of view, accession to the TPNW is compatible with NATO membership" (Nystuen, Egeland, and Hugo 2018a, 5). It would, thus, also be a political choice for NATO allies to "(...) pursue diplomatic action within NATO to modify nuclear policy to be compatible with the TPNW, or, failing to obtain such a change, to disavow nuclear deterrence on a national basis" (Meyer 2020). Similarly, NATO allies could choose to declare individually or collectively their wish of moving away from a nuclear deterrence-based security architecture (Kmentt 2021). A broader discourse on the TPNW in nuclear client states could, thus, lead to a recognition that they, too, understand nuclear deterrence as an unsustainable proposition for the long run given the humanitarian consequences and risks of the use of nuclear weapons to the undiminished security of all humankind. Subsequently, these states could disassociate themselves from the nuclear weapons dimension of NATO and initiate concrete steps towards the replacement of nuclear deterrence with other forms of deterrence and conflict management. This kind of engagement could be a key focus and possible political deliverable of universalisation efforts in nuclear client states.

## Conclusion

Universalisation of the TPNW is a strategy for maximising the treaty's authority and its core norms and principles in world politics in order to influence the policies of the nuclear-armed and their supporters. Growing its membership is essential to this. The TPNW with its compelling rationales of humanitarian consequences, risks, and ethics in relation to nuclear weapons has provided its supporters with a strong argumentative toolbox. This toolbox can be used effectively to promote the treaty's universalisation and to challenge the stagnant state of nuclear disarmament. Universalisation strategies based on tailored narratives and outreach practices will have an impact if a broader and more

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<sup>21</sup>See for example the "United States Non-Paper: 'Defense Impacts of Potential United Nations General Assembly Nuclear Weapons Ban Treaty; Note by the Secretary'" (NATO 2016). This document lists several ways in which a ban could be effective, including by limiting nuclear-weapons-related planning, training, and transit or allowing allies to use, plan, or train to use nuclear weapons and nuclear weapons-sharing practices.



intensive societal discourse on nuclear weapons actually takes place. For the foreseeable future, this impact will be measured in additional ratifications, most likely from non-nuclear armed states, but also in the extent to which the TPNW enables its stakeholders to change the terms of the global nuclear weapons debate based on the arguments outlined here. In nuclear client states, and perhaps even some nuclear-armed states, the measure of success will be the extent to which the TPNW enables a more robust democratic debate that challenges current nuclear weapons policies and opens up the range of politically acceptable policy choices for this and the next generation of political leaders. More pressure and more demands for concrete nuclear disarmament measures and credible steps to reduce and move away from a reliance on nuclear weapons would constitute an important outcome of universalisation strategies.

The political opposition to this challenge will be formidable. The power asymmetries between the two competing institutions of nuclear disarmament and nuclear deterrence mean coercive power is more readily available to supporters of deterrence than disarmament. Socialisation into the TPNW's norms, principles and rationales will therefore necessarily be rooted in persuasion, argument and engagement. The key question for states that support the TPNW is whether the treaty and the goal of a world without nuclear weapons can be cemented as a high-level political priority in the coming years through the universalisation narratives and activities outlined above. To achieve this, the role of civil society in keeping the TPNW and the nuclear weapons issue in the public eye and demanding sustained engagement and political action on nuclear disarmament to reduce the risk of nuclear violence will be crucial. Equally, sustaining universalisation efforts and regular engagement with hold-outs, in particular non-nuclear armed states in the first instance, will be essential to the treaty's momentum.

It is important, however, to acknowledge that universalising the TPNW is not about embedding *new* norms and principles, or about cascading new or established norms and principles from a standing start. It is about consolidating an already-established set of norms and principles by moving some from a conditional to an unconditional status (for example, from conditional to unconditional prohibition), expanding the scope of others to include nuclear weapons (for example on positive obligations and security in relation to indiscriminate forms of violence), and injecting new energy into others (notably the norm of progress towards nuclear disarmament). But it is also about adding new political weight to this set in order to challenge those structures of power that are resistive of them. In that way, the TPNW is a cumulative contribution to this set of norms, principles and institutions that includes the NPT, IHL, IHRL (international human rights law), UNGA resolutions, the ICJ Advisory Opinion, NWFZs, the IAEA, CTBT, CWC, BTWC, CCM, and so on. Moreover, this set of norms and principles is not something that can be separated from the global and national politics of nuclear weapons and ignored, it is *intrinsic* to it.

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