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NATO and the Treaty on the Prohibition of Nuclear Weapons

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Summary

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- The Treaty on the Prohibition of Nuclear Weapons (TPNW) entered into force on 22 January 2021. The treaty had been opened for signature at United Nations Headquarters in New York on 20 September 2017, and the threshold of 50 deposits of instruments of ratification, required for the TPNW to enter effect, was reached on 24 October 2020.
 - As part of a project on understanding NATO obligations and how they interact with nuclear non-proliferation and disarmament law and policy, this paper focuses on what the entry into force of the TPNW should mean for the 30 NATO member states (Allies). NATO has maintained a strong unified position in opposition to the TPNW. Several NATO partner countries have joined the treaty; others have decided not to join, often citing the potential effect on their security and ongoing cooperation with NATO as grounds for this decision.
 - The reality is that the TPNW will now be here to stay. Even if the prospect of a NATO Ally becoming a party to the TPNW may be currently assessed as unrealistic, a too intense focus on opposing the TPNW may obscure NATO's broader long-standing commitment to global nuclear disarmament.
 - Having set out the basic principles of NATO's nuclear policy, and its delicate balance between nuclear disarmament and deterrence, this paper asks a number of critical questions in the context of the entry into force of the TPNW. What are the core arguments that NATO Allies have advanced against the TPNW? Do these arguments hold weight in response to various criticisms that have been levelled them against? Can the TPNW create customary international law? If so, is the 'persistent objector' strategy adopted by NATO Allies an effective one? And what can NATO now do to strengthen its support for arms control, disarmament and non-proliferation?
 - The paper concludes with recommendations as to how NATO can position itself on these issues in the future. It also suggests that TPNW supporters could do more to engage NATO and like-minded states on ways to advance the common goal of nuclear disarmament.

01

Introduction

Regardless of the tenacity with which NATO maintains its opposition to the TPNW, the reality is that the treaty, which entered into force on 22 January 2021, is now here to stay.

The Treaty on the Prohibition of Nuclear Weapons (TPNW) opened for signature at United Nations Headquarters in New York on 20 September 2017.¹ On the same day, in Brussels, the North Atlantic Council (NAC), the NATO Alliance's governing body composed of representatives of all Allies, issued a statement announcing that the then 29 Allies could not support the new treaty. The statement, which like all NAC documents was adopted on the basis of consensus, invited other states that might be willing to do so to 'seriously reflect on its implications for international peace and security'.² Since then, the Alliance has maintained its unified position in opposition to the TPNW. No NATO Ally has yet signed or become a party to the TPNW. In addition, several NATO partners have decided not to join the treaty, often citing the potential effect on their security and ongoing cooperation with NATO as grounds for this decision.³ On 15 December 2020, the NAC adopted a further statement on the TPNW. While the Allies 'reaffirm our commitment to the preservation and strengthening of arms control, disarmament, and non-proliferation', the statement read, 'we collectively reiterate our opposition to this treaty, as it does not reflect the increasingly challenging international security environment and is at odds with the existing non-proliferation and disarmament architecture'.⁴ This statement followed

¹ For the text of the TPNW as approved, see UN General Assembly (2017), A/CONF.229/2017/8, 7 July 2017, <http://undocs.org/A/CONF.229/2017/8> (accessed 24 Nov. 2020).

² See NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*, 20 September 2017, https://www.nato.int/cps/en/natohq/news_146954.htm (accessed 24 Nov. 2020).

³ NATO partners include a wide range of states that are part of various partnership structures. These include the Partnership for Peace, involving states from Europe and Eurasia; the Mediterranean Dialogue, which covers states in the Middle East and North Africa; and the Istanbul Cooperation Initiative, covering the Persian Gulf countries. In addition to these partnership structures, NATO has 'global partners' such as Australia, Colombia, Japan, New Zealand and South Korea. Some of these partners have published analyses of how the TPNW relates to their respective security interests. See for example Swedish Ministry of Foreign Affairs (2019), *Utredning av konsekvenserna av ett svenskt tillträde till konventionen om förbud mot kärnvapen* [Inquiry into the consequences of a Swedish accession to the Treaty on the Prohibition of Nuclear Weapons], January 2019, https://www.regeringen.se/48f047/contentassets/55e89d0a4d8c4768a0cabf4c3314aab3/rapport_l-e_lundin_webb.pdf (accessed 24 Nov. 2020); Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*, 30 June 2018, https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/sicherheitspolitik/2018-bericht-arbeitsgruppe-uno-TPNW_en.pdf (accessed 24 Nov. 2020).

⁴ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*, 15 December 2020, https://www.nato.int/cps/en/natohq/news_180087.htm (accessed 18 Dec. 2020).

the attainment, on 24 October 2020, of the threshold of 50 deposits of instruments of ratification required for the TPNW to enter into force. This figure includes several ratifications by members of NATO's Partnership for Peace programme.⁵ The TPNW entered into force on 22 January 2021, and more ratifications can be expected in the future.⁶ Civil society organizations such as the International Campaign to Abolish Nuclear Weapons (ICAN) and its members will continue to exert pressure on countries where it has partner organizations.⁷ Domestic constituencies in several NATO Allies will continue to advocate in favour of the TPNW. While this pressure will not affect all Allies in the same way, it will be felt most acutely in certain European countries where there is already a considerable domestic constituency in support of the TPNW.

Regardless of the tenacity with which NATO maintains its opposition to the TPNW, the reality is that the treaty will now be here to stay.

As part of a project on understanding NATO obligations and how they relate to nuclear non-proliferation and disarmament, law and policy,⁸ this paper focuses on what the TPNW's entry into force means for NATO. Regardless of the tenacity with which NATO maintains its opposition to the TPNW, the reality is that the treaty will now be here to stay. The hope – likely nurtured in many NATO capitals over the past few years – that the TPNW 'should be left in limbo, as a protest vote for those with nothing to lose'⁹ has not played out. Even if one assesses the prospect of a NATO Ally becoming a TPNW member as unrealistic,¹⁰ a too intense focus on opposing the TPNW may obscure NATO's broader commitment to nuclear non-proliferation and disarmament. As a multilateral institution, NATO itself has limited power to effect nuclear disarmament. Disarmament commitments are made by individual Allies, including both nuclear and non-nuclear states. It is in the best interests of NATO to continue to support the development of revived and innovative approaches to nuclear disarmament generally, while continuing to maintain the Alliance's principled opposition to the TPNW.

⁵ The Partnership for Peace countries that have signed and ratified the TPNW are Austria, Ireland, Kazakhstan and Malta.

⁶ There were 52 parties to the TPNW as of 22 January 2021.

⁷ ICAN's website indicates partner organizations in 103 countries, including two in China and two in Russia, with none in North Korea or Iran. See ICAN, 'Partner Organizations,' <https://www.icanw.org/partners> (accessed 18 Dec. 2020).

⁸ Chatham House is examining NATO obligations under the nuclear Non-Proliferation Treaty (NPT) and the TPNW, while exploring new approaches that NATO could adopt to reconcile strategic stability with nuclear disarmament approaches. For a different perspective on this subject, see Caughley, T. and Afina, Y. (2020), *NATO and the Frameworks of Nuclear Non-proliferation and Disarmament: Challenges for the 10th NPT Review Conference*, Research Paper, London: Royal Institute of International Affairs, <https://www.chathamhouse.org/sites/default/files/2020-05-29-nato-npt-frameworks-caughley-afina-2.pdf> (accessed 24 Nov. 2020).

⁹ Roberts, B. (2018), *Ban the Bomb? Or Bomb the Ban? Next Steps on the Ban Treaty*, European Leadership Network, Global Security Policy Brief, March 2018, <https://www.europeanleadershipnetwork.org/wp-content/uploads/2018/03/180322-Brad-Roberts-Ban-Treaty.pdf> (accessed 24 Nov. 2020).

¹⁰ See for example Williams, H. (2020), 'What the Nuclear Ban Treaty Means for America's Allies', War on the Rocks, 5 November 2020, <https://warontherocks.com/2020/11/what-the-nuclear-ban-treaty-means-for-americas-allies> (accessed 24 Nov. 2020). According to Williams: 'At present, membership is too great a risk for America's allies until the treaty proves whether it improves or undermines members' security and addresses concerns regarding its credibility.'

The next chapter reviews the basic principles of NATO's nuclear policy, which features a delicate balance between disarmament and deterrence. Chapter 3 then reviews the core arguments that NATO Allies have advanced against the TPNW. It asks whether these arguments hold weight in response to various criticisms that have been levelled against them. Chapter 4 considers broader questions of international law: can the TPNW create customary international law? If so, is the 'persistent objector' strategy adopted by NATO Allies an effective one? Chapter 5 provides a brief overview of NATO's policies on arms control, disarmament and non-proliferation (ADN), and suggests that the Alliance should increase its support for efforts in this area. In conclusion, Chapter 6 sets out recommendations as to how NATO can position itself on these issues into the future.

02 NATO nuclear policy

NATO's nuclear policy, with a delicate balance between deterrence and disarmament at its core, holds that as long as nuclear weapons exist, it will remain a nuclear alliance.

The main elements of NATO's nuclear policy can be found in various decisions adopted over the years on the basis of consensus. Nuclear deterrence has been an essential part of NATO's overall defence posture for 70 years, and the 2010 Strategic Concept directly referred to NATO as a nuclear alliance. NATO's first strategic concept, adopted just a few months after the Alliance was established, referred to the importance of US nuclear weapons to the security of all Allies.¹¹ Subsequent strategic documents adopted over the course of NATO's history developed the major elements of the Alliance's nuclear policy, ranging from the first deployments of US nuclear weapons to Europe in the 1950s to the flexible response strategy in the 1960s, the reinforcement of extended deterrence in the 1970s, and the 'dual-track decision' of 1979.¹² The dual track combined deployments of new nuclear delivery systems in five European NATO members in response to the Soviet deployment of a new and destabilizing nuclear system, alongside a negotiating track that eventually led to the successful negotiation of one of the landmark arms control agreements of Cold War, the Intermediate-Range Nuclear Forces (INF) Treaty.¹³ The easing of tensions in the final years of the Cold War ultimately enabled dramatic reductions in the number of nuclear weapons stationed in Europe.

¹¹ NATO (1950), *The Strategic Concept for the Defence of the North Atlantic Area*, DC 006/1, 6 January 1950, <https://archives.nato.int/strategic-concept-for-defence-of-north-atlantic-area-2;isad> (accessed 18 Dec. 2020).

¹² For a brief overview of the historical development of NATO nuclear policy, see Pifer, S. (2011), *NATO, Nuclear Weapons and Arms Control*, Brookings Institution, Arms Control Series, Paper 7, July 2011, https://www.brookings.edu/wp-content/uploads/2016/06/0719_arms_control_pifer.pdf.

¹³ The INF Treaty's full title is the 'Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles'.

Current NATO nuclear policy is based on the Alliance's latest Strategic Concept, which was adopted at the Lisbon Summit of Heads of State and Government in 2010. While a comprehensive account of the Strategic Concept's relevant language is beyond the scope of this paper, it is worth highlighting some key language to illustrate the delicate balance between deterrence and disarmament that lies at the policy's core.

The 2010 Strategic Concept sets out NATO's three core tasks of collective defence, crisis management and cooperative security. Within the context of collective defence, the Strategic Concept states:

Deterrence, based on an appropriate mix of nuclear and conventional capabilities, remains a core element of our overall strategy. The circumstances in which any use of nuclear weapons might have to be contemplated are extremely remote. As long as nuclear weapons exist, NATO will remain a nuclear alliance.¹⁴

The 2010 Strategic Concept also confirmed Allies' commitment to further disarmament:

We are resolved to seek a safer world for all and to create the conditions for a world without nuclear weapons in accordance with the goals of the Nuclear Non-Proliferation Treaty, in a way that promotes international stability, and is based on the principle of undiminished security for all. [...] With the changes in the security environment since the end of the Cold War, we have dramatically reduced the number of nuclear weapons stationed in Europe and our reliance on nuclear weapons in NATO strategy. We will seek to create the conditions for further reductions in the future.¹⁵

Through regular declarations at the head of state or government and ministerial levels, and public statements by Alliance leaders, notably the secretary general, NATO consistently reaffirms the essential elements of its nuclear policy, while adapting to changes in the security climate. For example, the declaration adopted at the 2016 Warsaw Summit provided as follows:

Allies emphasise their strong commitment to full implementation of the Nuclear Non-Proliferation Treaty (NPT). The Alliance reaffirms its resolve to seek a safer world for all and to create the conditions for a world without nuclear weapons in full accordance with all provisions of the NPT, including Article VI, in a step-by-step and verifiable way that promotes international stability, and is based on the principle of undiminished security for all. Allies reiterate their commitment to progress towards the goals and objectives of the NPT in its mutually reinforcing three pillars: nuclear disarmament, non-proliferation, and the peaceful uses of nuclear energy. [...]

We remain committed to contribute to creating the conditions for further reductions in the future on the basis of reciprocity, recognising that progress on arms control and disarmament must take into account the prevailing international security environment. We regret that the conditions for achieving disarmament are not favourable today.¹⁶

The 2017 NAC statement on the TPNW¹⁷ specifically refers to the Warsaw Summit language, and the 2020 NAC statement draws on almost all of this language as well.

¹⁴ NATO (2010), *Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization*, 19–20 November 2010, https://www.nato.int/strategic-concept/pdf/Strat_Concept_web_en.pdf.

¹⁵ Ibid.

¹⁶ NATO (2016), *Warsaw Summit Communiqué Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw 8–9 July 2016*, 9 July 2016, paras 64–65, https://www.nato.int/cps/en/natohq/official_texts_133169.htm (accessed 24 Nov. 2020).

¹⁷ NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*.

Among the features of the security environment that are ‘not favourable today’, NATO regularly cites North Korea’s nuclear weapons programme; as well as Russia’s recent nuclear policy, including its violation of the INF Treaty, its development of new and novel nuclear weapons and delivery systems,¹⁸ and what Allies describe as ‘its irresponsible and aggressive nuclear rhetoric, military concept and underlying posture’.¹⁹ The latter takes place in the context of a larger-scale programme of Russian exercises in recent years.²⁰ Other issues, such as the role of emerging technologies in discussions related to international security and stability, along with regional rivalry between India and Pakistan and instability in the Middle East, can all be cited as factors contributing to an unfavourable security environment. Beginning quite recently, China has featured more explicitly in NATO’s description of the security environment. For example, in November 2020 Secretary General Jens Stoltenberg pointed to the need to anchor China more firmly in the multilateral disarmament architecture.²¹ Since NATO’s opposition to the TPNW is closely linked to the Alliance’s assessment of the security environment, we will return to these issues in the next chapter.

It is crucial to note that NATO as an alliance does not possess nuclear weapons. Instead, the three individual nuclear weapon states of the Alliance maintain absolute custody and control over their weapons.

Over the years, NATO has translated these policy decisions into capabilities and structures. On capabilities, it is crucial to note that NATO as an alliance does not possess nuclear weapons. Instead, the three individual nuclear weapon states of the Alliance maintain absolute custody and control over their weapons, even where these weapons are assigned to NATO subject to national assurances or where they are stationed in other host countries under the Alliance’s long-standing nuclear sharing arrangements.²² NATO’s structures flow from its essential role of providing a unique multilateral forum to ‘[support and facilitate] policy-making among members, and consultations with partners and other countries, and [aid] in the

¹⁸ President Vladimir Putin presented such systems in a speech on 1 March 2018. For an analysis, see Pifer, S. (2018), ‘Putin on the nukes’, Brookings Institution, 2 March 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/03/02/putin-on-the-nukes>.

¹⁹ NATO (2016), *Warsaw Summit Communiqué*, para. 10.

²⁰ See for example Johnson, D. (2018), ‘VOSTOK 2018: Ten years of Russian strategic exercises and warfare preparation’, *NATO Review*, 20 December 2018, <https://www.nato.int/docu/review/articles/2018/12/20/vostok-2018-ten-years-of-russian-strategic-exercises-and-warfare-preparation/index.html> (accessed 24 Nov. 2020). (‘A number of dual-capable (conventional/nuclear) weapons systems participated in the exercises, conducting simulated or live-fire launches.’)

²¹ NATO (2020), ‘Speech by NATO Secretary General Jens Stoltenberg at the 16th Annual NATO Conference on Weapons of Mass Destruction, Arms Control, Disarmament and Non-Proliferation’, 10 November 2020, https://www.nato.int/cps/en/natohq/opinions_179405.htm (accessed 24 Nov. 2020), (‘The time when China was at the margins of nuclear weapons development is over. As a global power with a large military and a growing nuclear arsenal, it has a responsibility to engage openly and constructively in arms control negotiations. Regrettably, Beijing has so far refused to join any talks. And the lack of transparency on its nuclear capabilities and intentions is of concern. But ultimately, I am convinced that China, like the rest of the world, would benefit from an arms control regime that limits the number of nuclear weapons, increases transparency, and enhances predictability.’)

²² For a recent factsheet on the basic elements of NATO’s nuclear deterrence and their governance arrangements, see NATO (2020), *NATO Nuclear Deterrence*, February 2020, https://www.nato.int/nato_static_fl2014/assets/pdf/2020/2/pdf/200224-factsheet-nuclear-en.pdf (accessed 24 Nov. 2020). It is important to note that factsheets such as those cited here are not NAC-agreed documents but rather summaries of NATO policy, prepared by the NATO International Staff for the purpose of communicating agreed policies, which are often expressed in a number of different documents adopted over the years, to the broader public in a concise manner.

implementation of international obligations'.²³ The Nuclear Planning Group (NPG) is the Alliance's main multilateral forum on nuclear policy and includes all members with the exception of France, which has a long-standing decision not to participate. The NPG's High Level Group (HLG) was formed in 1977 to address the challenges posed by new Soviet nuclear systems, especially the SS-20 ground-launched ballistic missile system. It continues to serve as the senior advisory body to the NPG on nuclear policy and planning issues, and also oversees nuclear weapons safety, security and survivability. While the NPG is chaired by the NATO International Staff and serves under the direction of the secretary general, the HLG is chaired by the US and is composed of decision-makers and experts.

Finally, from a legal perspective, it is worth noting that the Alliance's foundational treaty, the North Atlantic Treaty,²⁴ does not mention nuclear weapons, or any other type of weapon for that matter. Nor does it mention nuclear deterrence, even though this policy has been part of the Alliance's overall strategic landscape from the time of the drafting of the Treaty to the present day. Rather, the obligations in the North Atlantic Treaty are formulated in general terms, and do not commit Allies to a particular means of achieving desired outcomes. For example, Article 3 provides that: 'In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.'²⁵ However, the Treaty does not detail how this is to be done. This is also the case for Article 5, which sets out the fundamental collective defence pact at the heart of the Alliance. The legal obligation under that article is for each Ally to respond to an armed attack 'by taking forthwith, individually and in concert with the other Parties, *such action as it deems necessary* [emphasis added], including the use of armed force, to restore and maintain the security of the North Atlantic area'.²⁶ This does not mean, as some seem to argue, that NATO's nuclear policy can be departed from without consequence. Rather, as described above, the policy decisions that make up NATO's nuclear policy have been taken at the highest political level and reiterated over many years. This difference between law and policy is important in the context of whether the TPNW is compatible with NATO obligations.

²³ For a recent factsheet on how the different components of NATO nuclear policy relate to nuclear disarmament, see NATO (2020), *NATO and Nuclear Disarmament*, October 2020, https://www.nato.int/nato_static_fl2014/assets/pdf/2020/10/pdf/2010-factsheet-nuclear-disarmament-en.pdf (accessed 24 Nov. 2020).

²⁴ NATO (1949), *The North Atlantic Treaty*, 34 U.N.T.S. 243, 4 April 1949, https://www.nato.int/cps/en/natolive/official_texts_17120.htm (accessed 24 Nov. 2020).

²⁵ *Ibid.*, Article 3.

²⁶ *Ibid.*, Article 5 [emphasis added].

03 NATO's concerns about the TPNW

NATO's two chief concerns about the TPNW can be summarized as: that the treaty does not reflect the contemporary security environment; and that it would undermine the NPT and broader cooperation towards nuclear disarmament.

Background: TPNW negotiations and approval at the UN

The evolution of the TPNW from proposal stage to negotiations was closely followed within NATO.²⁷ Prior to any discussions about a new treaty, Norway supported the series of conferences on humanitarian impacts of nuclear weapons states, hosting the first one in 2013. Despite this, most of the Allies positioned themselves against the new treaty even before negotiations formally began in 2017. Although some Allies had participated in some of the conferences on the humanitarian impacts of nuclear weapons that preceded the TPNW negotiations, only one of the then 29 Allies – the Netherlands – decided to participate in the treaty negotiations. The other 28, together with a number of NATO partners, decided not to take part, and some Allies issued statements criticizing the draft.²⁸

²⁷ For a contemporaneous article that describes this process and some legal background on the factors behind NATO's position, see Hill, S., and Lemétayer, D. (2019), 'The Treaty on the Prohibition of Nuclear Weapons: A Legal View from NATO', *NATO Legal Gazette*, 39, https://www.act.nato.int/images/stories/media/doclibrary/legal_gazette_39.pdf (accessed 24 Nov. 2020).

²⁸ For a concise description of the negotiating process, see Mills, C. (2020), 'Negotiating a Treaty on the Prohibition of Nuclear Weapons', House of Commons Library, Briefing Paper Number 7986, 16 November 2020, <https://commonslibrary.parliament.uk/research-briefings/cbp-7986> (accessed 24 Nov. 2020). The P3 (France, the UK and the US) issued a joint statement on the day the TPNW was adopted. US Mission to the United Nations (2017), 'Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption', 7 July 2017, <https://usun.usmission.gov/joint-press-statement-from-the-permanent-representatives-to-the-united-nations-of-the-united-states-united-kingdom-and-france-following-the-adoption>.

The Netherlands positioned itself differently to other NATO Allies during the negotiations. As such, its national positions are worthy of particular consideration. An important reason behind the Netherlands' decision to participate in the negotiations was a motion proposed in the States General (the Netherlands parliament) on 28 April 2016, urging the government 'to devote itself actively' and participate in the international negotiations.²⁹ Moreover, at the time, the Netherlands was chairing the 2017 NPT Preparatory Committee in Vienna and needed to be fully aware of the range of disarmament processes. Notwithstanding its participation in the TPNW negotiations, the Netherlands still took the weighty decision to call a vote on the draft treaty, and to vote 'no';³⁰ this was the only vote against the draft. The other NATO Allies, together with many NATO partners, had decided not to participate in the process and thus did not vote. In an explanation of the country's vote, the Netherlands representative pointed to the incompatibility of the treaty with the country's NATO obligations and its commitment to NATO, as well as to the 'inadequate verification provisions' and to the fact that the treaty 'undermines the Non-Proliferation Treaty'.³¹ These reasons would ultimately be reflected in the Alliance's statement on the TPNW. At the same time, the Netherlands also tried to strike a balance looking towards the future:

We still have a lot of work ahead of us. We have heard many times that this treaty is not aiming to weaken existing instruments but to encourage their further implementation. All of us who support nuclear disarmament must ensure that, and refocus our efforts so that we can look forward towards further progress.³²

Back at NATO headquarters in Brussels, Allies were having lengthy discussions about how best to position themselves as regards the TPNW. The NAC statement's timing – issued on 20 September 2017, the day the treaty was opened for signature in New York – was not coincidental. Rather, the statement was envisioned as a key move in NATO's response to the TPNW. Its content was carefully negotiated during the intervening period between the UN vote and the opening of the TPNW for signature. As NATO's then deputy secretary general, Rose Gottemoeller, put it in a meeting at the Vatican later that year: 'Such statements are rare and an indication of how seriously the Alliance takes this debate.'³³ It was particularly rare – perhaps unprecedented – for the NAC to comment on a treaty that had not even entered into force and that its members had declared they did not support.

Although the 2018 Brussels Summit declaration featured two full paragraphs on nuclear policy, it did not mention the TPNW.³⁴ Neither did the more concise

²⁹ House of Representatives of the States General (2016), Citizens' initiative 'Sign against nuclear weapons', No. 11, 28 April 2016, https://nonukes.nl/wp-content/uploads/2016/06/BZ119750C_Motion-Servaes-PvdA-C.S._NL-should-actively-work-start-negotiations-international-treaty.pdf (accessed 24 Nov. 2020).

³⁰ See United Nations General Assembly (2017), *Vote Name: Item 9, A/CONF.229/2017/L.3/Rev.1, Draft treaty on the prohibition of nuclear weapons*, 7 July 2017, https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/07/A.Conf_.229.2017.L.3.Rev_.1.pdf (accessed 24 Nov. 2020).

³¹ Kingdom of the Netherlands (2017), *Explanation of vote of the Netherlands on text of Nuclear Ban Treaty*, 7 July 2017, <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/07/Netherlands-EoV-Nuclear-Ban-Treaty.pdf> (accessed 19 Dec. 2020).

³² *Ibid.*

³³ NATO (2017), 'Remarks by NATO Deputy Secretary General Rose Gottemoeller during a panel discussion on Perspectives for a World Free from Nuclear Weapons at Vatican City', 10 November 2017, https://www.nato.int/cps/en/natohq/opinions_148789.htm (accessed 24 Nov. 2020).

³⁴ NATO (2018), 'Brussels Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 11–12 July 2018', 11 July 2018, https://www.nato.int/cps/en/natohq/official_texts_156624.htm, paras 35–36 (accessed 24 Nov. 2020).

outcome document of the 2019 meeting of NATO leaders in London.³⁵ However, NATO's three nuclear weapon states regularly make their position on the TPNW known.³⁶ Secretary General Stoltenberg and other Alliance leaders also periodically address the TPNW. In November 2020, for example, at NATO's Annual Conference on Weapons of Mass Destruction, Arms Control, Disarmament and Non-Proliferation, Stoltenberg said:

I know that there are those that look at the Treaty on the Prohibition of Nuclear Weapons – or the Ban Treaty – as an alternative solution to eliminate all nuclear weapons. At first glance it seems attractive. But the reality is that it will not work. The Ban Treaty has no mechanism to ensure the balanced reduction of weapons. And no mechanism for verification. Moreover, it has not been signed by any state that possesses nuclear weapons. Simply giving up our deterrent without any guarantees that others will do the same is a dangerous option.³⁷

Most recently, the December 2020 NAC statement recalls that:

NATO is a defensive Alliance. The fundamental purpose of NATO's nuclear capability is to preserve peace, prevent coercion, and deter aggression. A world where the states that challenge the international rules-based order have nuclear weapons, but NATO does not, is not a safer world. [...] We call on our partners and all other countries to reflect realistically on the ban treaty's impact on international peace and security, including on the NPT, and join us in working to improve collective security through tangible and verifiable measures that can reduce strategic risks and enable real progress on nuclear disarmament.³⁸

Concerns set out in the NAC statements

NATO's concerns about the TPNW, as articulated in the NAC statements of September 2017 and December 2020, can be boiled down into two main points. First, the TPNW does not reflect the contemporary security environment – notably, the increase in global tensions over the past decade. The treaty would not achieve its aims because it fails to include the main threat actors within that environment. Second, the TPNW would undermine the NPT and broader cooperative efforts towards nuclear disarmament.

The two brief NAC statements did not much elaborate on the reasons behind these concerns. This has been both an advantage and a disadvantage. On the one hand, it is likely that the relative brevity of the statements helped achieve consensus. Moreover, they give officials a clear and concrete statement of policy to cite. On the other hand, the lack of elaboration of the arguments makes it more difficult to respond in real time to the pushback generated by the statements among TPNW supporters. This is particularly so when the arguments made are the result of fairly detailed legal analysis and tend to be issued in the form of a 'debunking of myths'.

³⁵ NATO (2019), 'London Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in London 3–4 December 2019', https://www.nato.int/cps/en/natohq/official_texts_171584.htm (accessed 24 Nov. 2020).

³⁶ For example, in the UN Security Council's February 2020 open meeting on how to strengthen the NPT, France, the UK and the US reaffirmed that they will not sign or ratify the TPNW. See UN Security Council (2020), S/PV.8733, 26 February 2020, <https://undocs.org/Home/Mobile?FinalSymbol=S%2FPV.8733> (accessed 19 Dec. 2020).

³⁷ NATO (2020), 'Speech by NATO Secretary General Jens Stoltenberg at the 16th Annual NATO Conference on Weapons of Mass Destruction, Arms Control, Disarmament and Non-Proliferation'.

³⁸ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

In short, the debate on the TPNW seems to be polarized into two basic camps, with much mutual rebutting of the other side's arguments but little dialogue. In order to identify how this gap might be bridged, while avoiding more divisiveness, NATO's concerns are worth unpacking and evaluating against the critiques.

The TPNW's effectiveness in today's security environment

One concern expressed in the NAC statements has to do with the security environment and NATO's conclusion, mentioned above, that 'conditions for achieving disarmament are not favourable today'.³⁹ The relevant language from the 2017 statement reads:

The ban treaty, in our view, disregards the realities of the increasingly challenging international security environment. At a time when the world needs to remain united in the face of growing threats, in particular the grave threat posed by North Korea's nuclear programme, the treaty fails to take into account these urgent security challenges.⁴⁰

The only specific situation referred to in the 2017 statement is the crisis around the nuclear programme pursued by North Korea, which is mentioned twice in the document. However, the statement recalls the 2016 Warsaw Summit, the communiqué of which listed 'Russia's destabilising actions and policies'.⁴¹ While the 2020 statement only refers to the 'increasingly challenging international security environment' in general terms, since 2019 NATO has mentioned China's link to nuclear issues with increasing frequency.

NATO's approach is based on the belief that security conditions and progress on nuclear disarmament are inherently interlinked.

NATO's approach is based on the belief that security conditions and progress on nuclear disarmament are inherently interlinked. As the NAC put it in 2017: 'Seeking to ban nuclear weapons through a treaty that will not engage any state actually possessing nuclear weapons will not be effective, will not reduce nuclear arsenals, and will neither enhance any country's security, nor international peace and stability.'⁴² Rather, the TPNW – if applied to NATO – would represent a type of unilateral nuclear disarmament that would not be rewarded by improvements in adversary behaviour or other positive changes in the international security environment.

The main critique of NATO's position stems from the same notion about interlinkage, but draws an opposite conclusion. In fact, TPNW supporters might not necessarily disagree with NATO's threat assessment about Russia and North Korea. Rather, their

³⁹ NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*.

⁴⁰ *Ibid.*

⁴¹ See NATO (2016), *Warsaw Summit Communiqué*, para. 10. ('Russia's destabilising actions and policies include: the ongoing illegal and illegitimate annexation of Crimea, which we do not and will not recognise and which we call on Russia to reverse; the violation of sovereign borders by force; the deliberate destabilisation of eastern Ukraine; large-scale snap exercises contrary to the spirit of the Vienna Document, and provocative military activities near NATO borders, including in the Baltic and Black Sea regions and the Eastern Mediterranean; its irresponsible and aggressive nuclear rhetoric, military concept and underlying posture; and its repeated violations of NATO Allied airspace.')

⁴² NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*.

argument is that the two tracks (i.e. nuclear non-proliferation and disarmament) need to move more in parallel. Security conditions will never be wholly favourable for nuclear disarmament. Instead of taking the sequential approach of focusing on the need for security conditions to improve in the first instance, disarmament progress can itself create better security conditions and thus should be pursued. TPNW supporters see the treaty as having symbolic value, serving as a moral compass and thus a source of indirect influence on the future trajectory of nuclear disarmament.

In the foreseeable future, it remains unlikely that TPNW supporters will be able to convince NATO Allies to change their assessment of the prevailing international security environment. NATO Allies would welcome a concerted effort by civil society to pressure Russia, China and North Korea – for example – to help ameliorate the international security environment. Instead, there is a frustration in NATO circles that TPNW advocacy groups seem to focus mostly on Western democracies.

At the same time, waiting for an improvement in security conditions might be increasingly perceived as unrealistic. After all, progress in arms control and disarmament has been achieved under difficult conditions in the past, and NATO regularly reaffirms its willingness to continue engaging in the process.⁴³ However, the risk is that NATO's current stance of reaffirming commitments without commensurate action could be perceived as a veiled attempt to preserve the status quo. This could undermine the unity of the international community in facing threats that NATO and the other countries that rely on extended deterrence are concerned about. A lack of unity could in turn embolden adversaries to create further instability. From the perspective of both TPNW supporters and sceptics, the challenge will be how to ensure that this does not occur.

The TPNW's impact on the NPT

In addition to the question of the TPNW's effectiveness in the current security environment, the NAC statements make an argument about the TPNW's impact on the NPT. The relevant wording in the 2017 statement reads:

The ban treaty is at odds with the existing non-proliferation and disarmament architecture. This risks undermining the NPT, which has been at the heart of global non-proliferation and disarmament efforts for almost 50 years, and the IAEA Safeguards regime which supports it. The crisis caused by North Korea underlines the importance of preserving and enhancing the existing framework of the NPT.⁴⁴

The 2020 statement echoes this language, emphasizing that the TPNW 'risks undermining the global non-proliferation and disarmament architecture, with the NPT at its heart for more than 50 years, and the IAEA Safeguards regime that supports it'.⁴⁵

⁴³ NATO (2018), 'Brussels Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 11-12 July 2018', paras 42 & 44 ('Allies remain open to further arms control negotiations, with the aim of improving the security of the Alliance, taking into account the prevailing international security environment [...] The Alliance reaffirms its resolve to seek a safer world for all and to take further practical steps and effective measures to create the conditions for further nuclear disarmament negotiations and the ultimate goal of a world without nuclear weapons in full accordance with all provisions of the NPT, including Article VI, in an ever more effective and verifiable way that promotes international stability, and is based on the principle of undiminished security for all.')

⁴⁴ Ibid.

⁴⁵ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

This argument – that the new treaty ‘risks undermining’ the NPT – merits further examination, as it loomed particularly large over NATO discussions and continues to be a prominent feature of both NATO’s criticism of the TPNW and subsequent responses by TPNW supporters and the scholarly community.

From a legal perspective, the link to the NPT is provided in Article 18 of the TPNW, which deals with the TPNW’s relationship with other agreements. It reads:

The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the Treaty.⁴⁶

At first glance, this appears to be a ‘savings clause’ of the sort used in many international agreements. In this case, the ‘existing international agreements’ that are meant to be protected would certainly include the NPT. In fact, this seems to be precisely the intention, according to many people involved with the TPNW negotiations. The first draft of the TPNW contained a clear reference to obligations under the NPT.

The controversy has to do with the wording of the latter clause in Article 18 as it emerged after negotiations (‘where those obligations are consistent with the Treaty’). Among TPNW sceptics, this wording was seized on as evidence of ‘subordinating the NPT to the ban treaty’.⁴⁷ According to this reading, the wording could also lead to conflicts of interpretation:

For example, a party to the ban treaty might allege that peaceful nuclear cooperation (a key pillar of the NPT) cannot continue with a nuclear-weapons-possessing state, as it would violate the ‘assist, encourage or induce’ prohibition in article 1(e). Or if the NPT parties decided to require additional or improved safeguards procedures, a party to the ban treaty might argue that the ban treaty only requires the basic INFCIRC/153 agreement.⁴⁸

The wording, along with other reasons, gave rise to the only abstention on the TPNW vote, by Singapore.⁴⁹ Several experts have written about this ambiguity and tried to provide more clarity,⁵⁰ with the Swiss government’s 2018 report concluding that there is no legal conflict between the TPNW and the NPT.⁵¹ Yet questions remain about how there may be actual, specific conflicts between the TPNW and NPT. Any

⁴⁶ UN General Assembly (2017), A/CONF.229/2017/8.

⁴⁷ Highsmith, N., and Stewart, M. (2018), ‘The Nuclear Ban Treaty: A Legal Analysis’, *Survival*, 60(1): p. 141. See also Hill and Lemétayer (2019), ‘The Treaty on the Prohibition of Nuclear Weapons: A Legal View from NATO’ (citing concerns around Article 18 as being persuasive in NATO circles).

⁴⁸ Highsmith and Stewart (2018), ‘The Nuclear Ban Treaty’. At the same time, the TPNW’s preamble provides that ‘nothing in this Treaty shall be interpreted as affecting the inalienable right of its States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination’.

⁴⁹ United Nations (2017), ‘Conference to Negotiate Legally Binding Instrument Banning Nuclear Weapons Adopts Treaty by 122 Votes in Favour, 1 against, 1 Abstention’, DC/3723, 7 July 2017, <https://www.un.org/press/en/2017/dc3723.doc.htm> (accessed 27 Nov. 2020), (‘Singapore’s representative emphasized that [the TPNW] should not affect the rights and obligations of States parties to other agreements, he said, citing the Nuclear Non-Proliferation Treaty while noting that greater efforts should have been made around language to avoid unnecessary legal uncertainty.’)

⁵⁰ See for example Caughley and Afina (2020), *NATO and the Frameworks of Nuclear Non-proliferation and Disarmament*, pp. 20–1 (discussing the application of Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 23 May 1969, Art. 30 and concluding that the TPNW will not ‘prejudice’ obligations under the NPT as long as these obligations are consistent with the Treaty; incompatible provisions would be resolved in favour of the TPNW for states parties to both treaties); Nystuen, G., Egeland, K. and Hugo, T. G. (2018), *The TPNW: Setting the record straight*, Norwegian Academy of International Law, <http://intl.no/wp-content/uploads/2018/10/TPNW-Setting-the-record-straight-Oct-2018-WEB.pdf> (accessed 24 Nov. 2020) (arguing that it is in practice difficult to ascertain where precisely there would be incompatibility between the NPT and the TPNW).

⁵¹ Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*.

such conflicts may only become apparent in practice, now the TPNW has entered into force. In short, there seems to be an overall lack of trust around this language. One practical recommendation would be to have a dialogue including legal experts from both TPNW and non-TPNW states in order to identify the proper legal tools to analyse the relationship between the two treaties. Other expert commentators who have written about Article 18 could provide useful briefings to inform such a dialogue.

A fundamental concern for NATO seems more political than exclusively legal in nature: namely that the TPNW might come to be seen (at least by some) as a competing framework to the NPT, or even as an alternative to the NPT.

That said, even if the ambiguity in Article 18 could be addressed in a way that made lawyers comfortable, this would likely not be enough to dispel concerns about the TPNW undermining the NPT. This is because NATO's more fundamental concern seems more political than exclusively legal in nature: namely that the TPNW might come to be seen (at least by some) as a competing framework to the NPT, or even as an alternative to the NPT. By enabling the creation of a potential alternative framework, the TPNW could allow a state party to reap the political and public relations benefits of joining the new treaty, while forgoing the robust safeguards standards that have been put in place by the International Atomic Energy Agency (IAEA) through the NPT process.

It is a common point made by TPNW sceptics that the ban treaty lacks credible verification mechanisms. Indeed, this criticism is at the core of NATO's argument that the TPNW would not be effective. However, this view is contested by the supporters of the TPNW, and it is worth asking how this view regarding the provisions might go beyond just rendering the TPNW ineffective to actually undermine the IAEA.

In terms of safeguards, the TPNW requires states parties to have in place a comprehensive safeguards agreement with the IAEA (as in the NPT) but contains no obligation to negotiate and sign an Additional Protocol or the enhanced Small Quantities Protocol with the IAEA. Realizing there is a broad agreement that universalization of the Additional Protocol is a desirable goal, a compromise was necessary to achieving an agreement during the negotiations for the TPNW, in large part because the Additional Protocol is a voluntary arrangement and not legally required under the NPT.

As regards the verification of the elimination of nuclear weapons – an aspect that has not been addressed in any other treaty – Article 4 of the TPNW requires states parties to designate a competent international authority and offers two pathways for the verification of the disarmament process. The mechanisms are clearly underdeveloped. One important first step will be to identify and cooperate with a 'competent international authority' to put in place the necessary measures and safeguards to ensure the verified elimination of the nuclear weapons programme.

Confusion may arise, and may serve to undermine the IAEA, through the possibility of two potential ‘competent international authorities’ – one being the IAEA – being accorded different and possibly competing roles in a nuclear programme dismantling effort.

Given NATO’s stated support for the NPT, it would be against the Alliance’s interests to undermine existing safeguards. As a result, a practical recommendation would be for NATO to conduct more outreach about safeguards and verification issues in general, in an effort to raise awareness about the challenges associated with this aspect of disarmament. Article VI of the NPT commits states to ‘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’.⁵² Thus, any issue related to safeguards and verification should be part of the discussion.

Other potential NATO concerns

Several issues related to the TPNW that are relevant to debates regarding NATO’s position towards the treaty were not mentioned in the two NAC statements. This section discusses three of these issues:

1. the TPNW’s incompatibility with existing NATO commitments;
2. the effects of NATO’s work with partner countries; and
3. potential secondary effects on NATO.

Allies: incompatibility with existing NATO commitments

While NATO Allies have levelled a number of criticisms against the TPNW, one overarching theme has been the notion that the TPNW is not compatible with their political, military and legal commitments related to the Alliance. The Netherlands explicitly cited such an incompatibility in voting against the TPNW in the UN General Assembly.⁵³ A recent commentator concluded: ‘At present, membership in NATO and the nuclear ban treaty seem mutually exclusive.’⁵⁴ At the same time, by contrast, supporters of and academic commentators on the TPNW have argued that it would in fact be possible for a NATO Ally to be simultaneously party to the TPNW.

In light of ongoing domestic debates about the TPNW and/or issues such as the stationing of nuclear weapons on the territory of several NATO Allies,⁵⁵ this question may have continued relevance, even if all NATO Allies are currently on record as opposing the treaty.

⁵² United Nations (1968), *Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, United Nations Office for Disarmament Affairs, <https://www.un.org/disarmament/wmd/nuclear/npt/text> (accessed 16 Dec. 2020).

⁵³ Kingdom of the Netherlands (2017), *Explanation of vote of the Netherlands on text of Nuclear Ban Treaty*.

⁵⁴ Williams (2020), ‘What the Nuclear Ban Treaty Means for America’s Allies’.

⁵⁵ See for example Kingdom of Belgium (2020), *Accord de gouvernement*, 30 September 2020, pp. 77–8, https://www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf (accessed 24 Nov. 2020) (‘without prejudice to our NATO commitments and obligations, Belgium will continue to actively invest in nuclear disarmament and non-proliferation at the global level. Belgium will play a proactive role at the NPT RevCon in 2021, and with its European NATO allies, Belgium will verify how to reinforce the multilateral framework of non-proliferation, and how the TPNW [...] can give new impetus towards multilateral nuclear disarmament’).

This discussion focuses on the meaning of various prohibitions contained in Article 1.1 of the TPNW, whereby:

Each State Party undertakes never under any circumstances to:

- (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
- (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
- (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
- (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;
- (g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.⁵⁶

It is undisputed that certain aspects of NATO nuclear policy, in particular the nuclear sharing arrangements, would be impossible to reconcile with the prohibition on stationing set out in Article 1.1 (g).⁵⁷ At the same time, NATO policy has always required custody of stationed nuclear weapons to remain with the nuclear weapon state: this position predates the NPT, and the Alliance has consistently maintained that it is consistent with the NPT's prohibition on transfer.⁵⁸ It is an open question as to whether nuclear sharing arrangements could be similarly squared with the language of Articles 1.1(b) and (c) of the TPNW. But what about the more general commitments associated with NATO's nuclear policy?

Article 1.1(d) of the TPNW provides that no State Party shall 'Use or threaten to use nuclear weapons or other explosive nuclear device.'⁵⁹ There has been some recent scholarly analysis of whether adherence to the policy of nuclear deterrence that relies in part on potential recourse to nuclear weapons could be considered a threat of the use of force. On balance, the mere adherence to a policy of deterrence seems too diffuse to meet the threshold for the threat of use of force under international law.⁶⁰ This is in line with the 2020 NAC statement, which recalled that 'Allies are determined to ensure that NATO's nuclear deterrent remains safe, secure, and effective, and reject any attempt to delegitimise nuclear deterrence.'⁶¹

⁵⁶ UN General Assembly (2017), A/CONF.229/2017/8.

⁵⁷ Ibid.

⁵⁸ See Alberque, W. (2017), 'The NPT and the Origins of NATO's Nuclear Sharing Arrangements', *Proliferation Papers*, No. 57, IFRI, February 2017, https://www.ifri.org/sites/default/files/atoms/files/alberque_npt_origins_nato_nuclear_2017.pdf.

⁵⁹ UN General Assembly (2017), A/CONF.229/2017/8.

⁶⁰ See Highsmith, N. L. (2019), *On the Legality of Nuclear Deterrence*, Livermore Papers on Global Security No. 6, Lawrence Livermore National Laboratory Center for Global Security Research, November 2019, https://cgsr.llnl.gov/content/assets/docs/CGSR_LivermorePaper6.pdf.

⁶¹ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

However, the question does arise as to whether support for a policy of nuclear deterrence might fall within the scope of Article 1.1(e), which makes it a violation to ‘Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty.’⁶² This issue has been frequently framed by commentators as whether an Ally that joined the TPNW could continue to benefit from NATO’s nuclear deterrent provided under ‘nuclear umbrella’ arrangements. For example, a study from Harvard University concluded that the TPNW ‘requires a state party to renounce its nuclear umbrella status but does not stand in the way of alliances with states that continue to possess nuclear weapons’.⁶³

A group of Norwegian scholars has concluded, in a paper published by the Norwegian Academy of International Law in 2018, that:

There are no legal obstacles to Norway joining the TPNW. The TPNW is compatible with the NPT, the North Atlantic Treaty and other international agreements by which Norway is bound. However, Norwegian accession to the TPNW would prohibit Norway from assisting, encouraging or inducing its allies to develop, possess or use nuclear weapons. To comply with the TPNW, Norway would have to distance itself from any alliance documents endorsing the potential use of such weapons.⁶⁴

In their analysis, the scholars point to Norway’s historic policy of not accepting nuclear-armed vessels into its waters during peacetime.⁶⁵ Norway was, over time, able to use the Alliance’s consultation mechanisms to make its position understood without provoking a decision by other Allies to withdraw Norway from NATO’s nuclear umbrella.

This points to the distinction between politics and law. Although TPNW supporters often formulate their objections to NATO’s position by using legal arguments to illustrate the claim that the TPNW’s prohibitions can actually be reconciled with various activities that NATO Allies find valuable, the fact that a particular course of action might be a legally available option risks disregarding the potential political ramifications of such a move within NATO. The NAC statements of 2017 and 2020 make it clear that there is broad political agreement not to support the TPNW. It is difficult to separate the existence of a potentially legally available option for one Ally to change course from the political cost of doing so. As the Norwegian authors cited above concede, ‘[...] accession to the TPNW would probably be interpreted by some allies as a breach of alliance solidarity and a threat to NATO’s security and political cohesion’.⁶⁶ It is difficult to see, for example, how an Ally that joined the TPNW could continue to participate in the NPG. Even if the Ally itself considered this appropriate, other NATO members may have reservations.

⁶² UN General Assembly (2017), A/CONF.229/2017/8.

⁶³ International Human Rights Clinic at Harvard Law School (2018), *Nuclear Umbrella Arrangements and the Treaty on the Prohibition of Nuclear Weapons*, June 2018, http://hrp.law.harvard.edu/wp-content/uploads/2018/06/Nuclear_Umbrella_Arrangements_Treaty_Prohibition.pdf (accessed 24 Nov. 2020). For a similar analysis, see also Article 36 (2018), ‘Written evidence submitted by Article 36: House of Lords Select Committee on International Relations Inquiry: Nuclear Non-proliferation Treaty and Nuclear Disarmament’, 18 January 2018, <https://article36.org/wp-content/uploads/2019/10/Article-36-submission-Lords-IRC-nuclear-inquiry.pdf> (accessed 24 Nov. 2020) (‘NATO membership does not represent a legal barrier to states joining the TPNW: states ratifying the TPNW could continue military cooperation with nuclear-armed states, but could not remain under a ‘nuclear umbrella.’)

⁶⁴ Nystuen, G., Egeland, K. and Hugo, T. G. (2018), *The TPNW and its implications for Norway*, Norwegian Academy of International Law, September 2018, p. 19, <http://intl.no/wp-content/uploads/2018/10/tpnw-implications-for-norway-25-sept-2018.pdf> (accessed 24 Nov. 2020).

⁶⁵ *Ibid.*, p.22.

⁶⁶ *Ibid.*

Overall, within the context of the Alliance, the reality is that political commitments carry a heavy weighting. The content of political commitments is discussed much more frequently than are the legal obligations associated with NATO membership, which are formulated at a rather high degree of generality. Political commitments are part of signalling a coherent nuclear deterrence posture to the adversary. We could expect efforts to impose a high cost on an Ally that was considering joining the TPNW. Indeed, NATO Allies have the means necessary to impose costs on an Ally considering such a course of action, including on issues unrelated to nuclear weapons but of great importance to NATO generally, or to that Ally in particular. It would ultimately be for the Ally in question to determine whether it could bear that cost.

Partners: cooperation with NATO

While NATO Allies have decided not to join the TPNW, and have been joined in this position by most NATO partners, several partners have to date decided to become party to the TPNW. Regardless of their decision, all partners have had to assess whether joining the TPNW would conflict with their commitments to NATO.⁶⁷

NATO's position is that its partners are free to determine the security arrangements that best meet their needs. NATO partnerships are therefore a flexible tool. Specific work with partners is carried out based on mutually agreed cooperation plans. These are agreed between the partner country and the NAC, meaning that each Ally would have the ability to block consensus on a proposed partnership activity. These plans are regularly updated and submitted to the NAC for further approval.

From NATO's perspective, therefore, if a partner becomes party to the TPNW, this does not mean in principle that it is prevented from continuing its partnership with NATO. The question would be a political one: do Allies have the same appetite for partnership after the partner joins the TPNW? This would have to be assessed on a case-by-case basis and would depend on many factors, including the nature of the partnership activity being contemplated. Since current partnership activities do not have a nuclear policy dimension, one might ask why some partners were concerned about the TPNW's impact on them, while others were not. The answer may lie less with the content of the partnership activity than with a less specific fear that support for the TPNW would 'spill over' into the relationship in a way that could make NATO more wary of cooperation with that partner in the future. This question is difficult to assess in general terms, and would depend to some extent on how the partner decided to balance the weighting given to its own support for the TPNW against its own desire to continue cooperating with NATO.

A more concrete question could arise in connection with a potential future collective defence operation, if a situation had developed to the point where the survival of NATO Allies would be at stake. An example of such an *in extremis* scenario would be a large-scale collective defence response to counter aggression against Allies along NATO's eastern frontier. Could a state party to the TPNW actively participate in such an operation, in which the use or deployment of nuclear weapons might

⁶⁷ See for example Swedish Ministry of Foreign Affairs (2019), *Utredning av konsekvenserna av ett svenskt tillträde till konventionen om förbud mot kärnvapen*; Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*.

be considered by the NAC? Some commentators consider that the TPNW would not prevent participation by a party: ‘Parties to the TPNW could participate in joint military operations with a nuclear weapon state without contravening the treaty, provided there is no nexus between a particular task and an activity prohibited by the TPNW such as [...] stationing’.⁶⁸ There is no reason to doubt this assessment, at least in theoretical terms. But assessing how it would play out in practice would depend on what exactly would be asked of the partner (or what the partner would want to offer). Once again, stationing of nuclear weapons is a clear-cut case, but how would the analysis play out with other forms of cooperation? Overflight might be a more problematic example, and one that could easily arise, given the geographical context.

NATO Allies with partners should discuss ways to continue their cooperation in the nuclear realm in a manner that would not conflict with those states’ TPNW obligations nor be inconsistent with the treaty’s object and purpose.

The Swiss government’s 2018 report on the TPNW provides considerable food for thought for NATO partners. It concludes that Switzerland’s disarmament policy is in accord with the TPNW’s ultimate objective; however, that the risks in acceding to the treaty at this time outweigh the potential benefits of ratification of the treaty.⁶⁹ This is in part because ‘Switzerland’s security is inextricably linked to that of its neighbours and, due to its location, particularly to that of NATO, [thus] nuclear weapons play a part in its security.’⁷⁰ The Swiss analysis also highlights the unknown economic impact of the TPNW, the lack of increased safeguards requirements, and its relationship to the NPT as reasons not to support the TPNW at this time. The report finds that the TPNW does not limit military cooperation unless it is directly related to ‘developing, modernising, acquiring or using nuclear weapons’.⁷¹

As a practical recommendation, NATO Allies with partners should discuss ways to continue their cooperation in the nuclear realm in a manner that would not conflict with those states’ TPNW obligations nor be inconsistent with the treaty’s object and purpose. The issues raised in the Swiss report and others should be included on the agenda of such dialogues. It might also be worth drawing on experience with similar situations where a treaty contained restrictions on cooperation that were successfully reconciled and balanced with requirements associated with continued multinational military cooperation. Pertinent examples would be the 1997 Convention on the

⁶⁸ Caughley and Afina (2020), *NATO and the Frameworks of Nuclear Non-proliferation and Disarmament*, p. 23. See also International Human Rights Clinic at Harvard Law School (2018), *Nuclear Umbrella Arrangements and the Treaty on the Prohibition of Nuclear Weapons*, p. 5 (same conclusion).

⁶⁹ Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*, p. 1.

⁷⁰ Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*, p. 6.

⁷¹ Ibid.

Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa Treaty), and the 2008 Convention on Cluster Munitions.

Secondary effects

Another issue that was not addressed in the 2017 and 2020 NAC statements has to do with a range of potential secondary effects that the TPNW might have on NATO Allies and partners, due to commercial links between TPNW and non-TPNW states. Even if NATO Allies did not become parties to the TPNW, could there be an unexpected impact on NATO procurement, even where procurement projects were not related to nuclear weapons?

Industrial cooperation might fall within the scope of prohibited activity under Article 1 of the TPNW, most likely through the prohibition on assistance in Article 1.1(e). Article 5(2) is designed with a broad reach to cover all persons, including corporations and individuals, under the jurisdiction or control of a party to the TPNW. This might include multinational corporations based in other states but with jurisdictional links to TPNW states parties. Since NATO itself does not have nuclear forces, the issue of procurement of items for uses directly related to nuclear weapons (for example, components of a system) would not arise. However, the entire nuclear infrastructure is essentially dual-use in its nature. The bases that support the dual-capable aircraft (DCA) that some Allies contribute to the Alliance are also used for non-nuclear-related purposes. DCA components are manufactured all over the world. The scope of this prohibition might be difficult to define in such areas. The same difficulty might apply to equipment that is less obviously related to nuclear weapons. One example would be information and communications technologies that are not directly related to nuclear weapons but that are part of broader NATO systems (e.g. command, control and communication) that might be linked in some ways to NATO's nuclear weapon-related assets. It might therefore be difficult for NATO to convince an outside commercial partner that offering NATO its technology, even if for unrelated purposes, might not somehow fall foul of the Article 1.1(e) prohibition on assisting, encouraging or inducing.

One practical recommendation would be for NATO to conduct a study of potential impact in the procurement areas, including on possible mitigation measures such as supplier assurances. Such a study would be a good way to involve appropriate partners.

04 The TPNW and customary international law

While, on balance, it is unlikely that the TPNW could contribute to a customary international law ban on nuclear weapons, this is not to say that NATO's concerns in this regard are misplaced.

The 2017 NAC statement asserted that Allies ‘would not accept any argument that this treaty reflects or in any way contributes to the development of customary international law’.⁷² The 2020 NAC statement repeated this language.⁷³ It is unusual for NAC statements to contain detailed language of this sort on international law issues. This is a sign of how heavily the concern that the TPNW might somehow contribute to a customary international law ban on nuclear weapons has weighed on the debates among Allies.⁷⁴ On balance, it is unlikely that the TPNW could have this effect, given the current state of international law. However, this is not to say that NATO's concerns are misplaced.

Underlying the concerns set forth in the two statements was a sense in some quarters that the TPNW was being used as the latest front in a decades-long legal strategy to create an overarching norm of international law against nuclear weapons. There was also a concern that the TPNW itself was not sufficiently

⁷² NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*.

⁷³ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

⁷⁴ See for example the contribution of Nicolas Roche of the French Ministry of Foreign and European Affairs at the 2019 Carnegie International Nuclear Policy Conference. Carnegie Endowment for International Peace (2019), ‘What Effects Will the Ban Treaty Have Between Now and 2030?’ Event Panel, 12 March 2019, <https://carnegieendowment.org/2019/03/12/what-effects-will-ban-treaty-have-between-now-and-2030-pub-78876> (accessed 24 Nov. 2020).

nuanced in its portrayal of the state of international law on nuclear weapons. The TPNW's preamble states that 'any [emphasis added] use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law'.⁷⁵ While the preamble refers to 'any use', the International Court of Justice's 1996 advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* did not go quite so far. Rather, the Court held, in a divided vote: [...] 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;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake; [...]⁷⁶

While the entire advisory opinion was a controversial one (and, like all advisory opinions, non-binding), the omission of the *in extremis* caveat from the TPNW's preamble did not go unnoticed. These concerns might help explain why the two NAC statements address the legal consequences (or lack thereof) of the TPNW. As the 2017 statement put it, ' [...] there will be no change in the legal obligations on our countries with respect to nuclear weapons. Thus, we would not accept any argument that this treaty reflects or in any way contributes to the development of customary international law.'⁷⁷

While it is a general principle of international law that treaties do not create obligations for third states,⁷⁸ it is also an accepted principle that a rule set forth in a treaty could, under certain conditions, become binding on a third state as a customary rule, as long as the dual requirements of state practice and *opinio juris* (the recognition of a norm as legally binding) are present in the first place.⁷⁹ However, this is far from an automatic process. Two distinct concepts are relevant here: the concept of so-called 'specially affected states', and that of 'persistent objectors'. These concepts are distinct and must be analysed separately. As the ICJ has explained,⁸⁰ a lack of consent from specially affected states may have the effect of preventing the required general state practice from emerging, preventing the rule from coming into being in the first place. There is a strong argument that states with nuclear weapons and those in a nuclear alliance would be specially affected by a proposed ban on nuclear weapons. Even if a rule is indeed created, states that have objected to a certain degree to its emergence – so-called persistent objectors – will not be bound by it. While some elements can be extrapolated, there are no specific requirements of international law for how – including how

⁷⁵ TPNW, preamble: see UN General Assembly (2017), A/CONF.229/2017/8.

⁷⁶ ICJ Reports 1996, p. 226.

⁷⁷ NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*. The 2020 statement contains the same language.

⁷⁸ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 23 May 1969, Art. 34.

⁷⁹ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 23 May 1969, Art. 38.

⁸⁰ It is beyond the scope of this paper to provide a full explanation of this subject under international law. The author has laid out the arguments in more expanded fashion elsewhere. See Hill and Lemétayer (2019), 'The Treaty on the Prohibition of Nuclear Weapons: A Legal View from NATO', pp. 48–9. See also Caughley and Afina (2020), *NATO and the Frameworks of Nuclear Non-proliferation and Disarmament*, f.n. 103. The three major ICJ cases on the subject of persistent objectors are (1) the *Anglo-Norwegian Fisheries* case, ICJ Reports, 1951, p. 116; (2) the *North Sea Continental Shelf* case (ICJ Reports, 1969, p. 3); and (3) the *El Salvador/Honduras* case (ICJ Reports, 1992, p. 351). The 1996 advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* is also relevant on the specific issue of nuclear weapon states as specifically affected states.

often and in what format – persistent objectors need to make their position known. A pragmatic and contextual approach would be needed to evaluate a claim that a state is a persistent objector.

In the current circumstances, the NAC statements appear to be an effective strategy, both for preventing the emergence of a rule of customary international law in the first place and for establishing NATO Allies as persistent objectors to such a rule. We might expect NATO Allies to consider measures to maintain the effectiveness of this strategy over time. This could include reaffirming the NAC statements from time to time, potentially on the occasion of key events such as the first meeting of the TPNW states parties under the treaty.

One practical recommendation in this area would be for NATO to convene discussions between legal experts from Allies on a regular basis in order to explore potential steps in light of the evolution (for better or worse) of the international and regional security landscape.

05

NATO's ADN policy

NATO could continue to marry its opposition to the TPNW with a willingness to double down on its own engagement in the global arms control, disarmament and non-proliferation space.

One key feature of both the 2017 and 2020 NAC statements is an emphasis on broader arms control, disarmament and non-proliferation (ADN) policy. The 2020 statement reads as follows:

We reaffirm our commitment to the preservation and strengthening of arms control, disarmament, and non-proliferation. [...]

Arms control, disarmament, and non-proliferation have made, and should continue to make, an essential contribution to achieving NATO's security objectives. NATO Allies, individually and collectively, have a long track record of doing their part, and continue to support a number of initiatives that offer real progress on nuclear disarmament with tangible, effective measures.⁸¹

Like NATO's nuclear policy, the Alliance's ADN policy dates back to NATO's founding. In the early days of the Alliance, NATO Allies engaged in the five-nation disarmament talks in London (later also participating in the 10-nation talks), and made the first allied proposal in this space in 1957. At the NATO Summit in December of that year, the Allies called on the Soviet Union to negotiate, and formed a group of disarmament experts to meet at NATO headquarters. That group has met under different names continuously since 1957, and is now known as the Committee on Proliferation, meeting in politico-military format.

The Committee on Proliferation is the most senior NATO body dedicated to ADN policy, and meets regularly with Allied experts, as well as experts and decision-makers from NATO partner countries, officials from all related international organizations, and experts from think-tanks and academia. NATO also contributes to ADN through its Science and Technology Organization, which gathers thousands of

⁸¹ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

scientists from Allied and partner countries to work on scientific approaches to Allied security concerns, and its Science for Peace and Security Programme, which directs funding towards innovative scientific contributions to Allied security.

NATO's current ADN policies are summarized in the declarations adopted at NATO summits and other high-level meetings. The most recent such statement was agreed at the 2019 Brussels Summit:

Arms control, disarmament, and non-proliferation have made and should continue to make an essential contribution to achieving the Alliance's security objectives and for ensuring strategic stability and our collective security. NATO has a long track record of doing its part on disarmament and non-proliferation. After the end of the Cold War, NATO dramatically reduced the number of nuclear weapons stationed in Europe and its reliance on nuclear weapons in NATO strategy. We regret that the conditions for achieving disarmament have not become more favourable since the 2016 Warsaw NATO Summit. Allies remain collectively determined to uphold existing disarmament, arms control, and non-proliferation agreements and commitments. Allies remain open to further arms control negotiations, with the aim of improving the security of the Alliance, taking into account the prevailing international security environment.⁸²

The Declaration goes on to describe NATO's commitment to WMD non-proliferation, the NPT, and other agreements across all the pillars of the global ADN regime.⁸³

Given the clear links between NATO's nuclear policy and its ADN policy, NATO could continue to marry its opposition to the TPNW with a willingness to double down on the Alliance's role in the global ADN space. There are several ways that Allies could use existing NATO structures to do so.

One proven strength of NATO structures is that they can help Allies develop and/or coordinate their negotiating positions. This might be useful as Allies prepare for the upcoming NPT Review Conference in 2021.⁸⁴ For example, NATO could invite the chairpersons-designate of the three main committees and of any subsidiary bodies at the Review Conference⁸⁵ for discussions with Allies at NATO headquarters. Another way for NATO Allies to demonstrate their commitment to disarmament would be to develop outreach activities that give greater insight into the technical challenges related to disarmament, especially those associated with verification. This could consist of publicizing and broadening the base of support for ongoing work being organized by France and Germany on how to improve verification,⁸⁶ as well as engaging with efforts such as the International Partnership for Nuclear Disarmament Verification (IPNDV), a public-private partnership between the

⁸² NATO (2018), 'Brussels Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 11–12 July 2018', para. 42 (accessed 19 Dec. 2020).

⁸³ Ibid.

⁸⁴ For further detail on these proposals and others, see Gottemoeller, R. and Hill, S. (2020), *NATO's Current and Future Support for Arms Control, Disarmament and Nonproliferation*, Istituto Affari Internazionali, <https://www.iai.it/sites/default/files/iaip2045.pdf> (accessed 14 Jan. 2021).

⁸⁵ See United Nations (2020), 'Committees', <https://www.un.org/en/conferences/npt2020/committees> (accessed 19 Dec. 2020).

⁸⁶ This work was mentioned by President Emmanuel Macron in his nuclear policy speech in February 2020. See Macron, E. (2020), 'Speech of the President of the Republic on the Defense and Deterrence Strategy', 7 February 2020, <https://www.elysee.fr/en/emmanuel-macron/2020/02/07/speech-of-the-president-of-the-republic-on-the-defense-and-deterrence-strategy> (accessed 24 Nov. 2020).

US State Department and the Nuclear Threat Initiative.⁸⁷ NATO's Science and Technology Organization has begun examining scientific challenges to nuclear disarmament verification, and the NATO Committee on Proliferation has initiated dialogue with IPNDV, the Stepping Stones Approach, the Quad Initiative, and the Franco-German project. Outside of NATO, Allies should also continue to consult with the Allied P5 representatives to identify ways to support the P5 process,⁸⁸ and to meet with the working group chairs of the multilateral Creating an Environment for Nuclear Disarmament (CEND) initiative.⁸⁹

⁸⁷ For more information on this initiative, see Nuclear Threat Initiative (n.d.), 'International Partnership for Nuclear Disarmament Verification: Engaging a Diverse Group of States to Develop Innovative Monitoring and Verification Solutions', <https://www.nti.org/about/projects/international-partnership-nuclear-disarmament-verification> (accessed 24 Nov. 2020).

⁸⁸ For recommendations for the P5 process, see King's College London and European Leadership Network (2020), *The P5 Process: Opportunities for Success in the NPT Review Conference*, June 2020, <https://www.kcl.ac.uk/csss/assets/the-p5-process-opportunities-for-success-in-the-npt-review-conference.pdf> (accessed 24 Nov. 2020).

⁸⁹ For the latest state-of-play on CEND, see Ford, C. A. (2020), *Reframing Disarmament Discourse*, 3 September 2020, <https://www.state.gov/reframing-disarmament-discourse> (24 Nov. 2020).

06 Conclusions

Especially in the lead-up to the 10th NPT Review Conference, it is more important than ever for NATO to take a proactive role in signalling its support for the goals that it shares with TPNW supporters.

The current state of the debate on the TPNW is highly polarized. Given the nature of Allies' objections to the TPNW, it is unlikely that NATO will change its position as expressed in the 2017 and 2020 NAC statements. There is a strong feeling that TPNW supporters in civil society focus their energies on democratic countries and do not focus on other states that are exacerbating the current threat environment. TPNW supporters make good-faith arguments that often feature sophisticated legal interpretations aimed at addressing NATO's concerns. However, these arguments are likely to remain unpersuasive in so far as they focus on legally available options and ignore political realities. It would be unfortunate if the current spirit of polarization around the TPNW were to have a negative impact on the overall propensity for cooperation – which is clearly needed by the international community. As was suggested by the representative of the Netherlands when the TPNW was adopted, there is a need for more dialogue about how the international community can overcome differences.

Now that NATO has made its position on the TPNW clear, it is important not to overemphasize the issue in its overall messaging on support for disarmament. On NATO's side, more nuance would be helpful as the Alliance seeks to maintain a modern deterrence posture and demonstrate tangible support for nuclear disarmament.⁹⁰ As regards TPNW supporters, more genuine engagement with the concerns expressed by NATO and other states – beyond merely issuing rebuttals – would also serve a long-term agenda in favour of disarmament.

⁹⁰ Heather Williams (2020), 'What the Nuclear Ban Treaty Means for America's Allies', made the same point in the context of the United States' posture toward its allies on TPNW and nuclear disarmament issues: 'Providing a strong extended deterrent to allies while also being sensitive to disarmament pressures is indeed a delicate balance, but it is one that the United States has to pursue with greater nuance.'

In the spirit of refocused effort from all sides, it is more important than ever for NATO to take a proactive role in signalling its support for the ADN goals that it shares with TPNW supporters, especially in the lead-up to the 10th NPT Review Conference in 2021. Given its diverse membership and wide-ranging partnership networks, NATO can help bridge this gap. This paper has made specific suggestions on areas where more engagement beyond simply opposing the TPNW could be helpful. This includes possibilities for engagement with TPNW supporters. NATO's partners can be a useful bridge in this regard.

Ultimately, however, the TPNW is – and should remain – only a relatively small component of NATO's nuclear non-proliferation and disarmament posture. NATO should also continue to engage more broadly in the nuclear ADN realm, including in nuclear risk reduction, transparency measures among others. In March 2020, the NAC adopted a strong statement of support for the NPT on the occasion of the 50th anniversary of the treaty's establishment.⁹¹ The Council's statement also called on NPT states parties to work together to make the Review Conference a success.⁹² This language was a first in NATO history. NATO should consider how to amplify the message behind its statement, which risks having become lost in the tumultuous events driven by the COVID-19 pandemic.

NATO has a long history of working with its partners on ADN issues. Further efforts and outreach can be useful. NATO's positioning in the broader disarmament space in this way would show how the Alliance can play a constructive role and try to bridge gaps in what has become a divisive debate on the TPNW. At the same time, TPNW supporters should also support and see the value in such efforts.

⁹¹ See NATO (2020), *North Atlantic Council Statement on the 50th Anniversary of the Treaty on the Non-Proliferation of Nuclear Weapons*, 5 March 2020, https://www.nato.int/cps/en/natohq/official_texts_174104.htm (accessed 24 Nov. 2020) ('We, as NATO Allies, celebrate this visionary Treaty and its remarkable achievements. The NPT remains the essential bulwark against the spread of nuclear weapons, the cornerstone of the global non-proliferation and disarmament architecture, and the framework for international cooperation in sharing the benefits of the peaceful uses of nuclear energy, science, and technology. Allies remain strongly committed to full implementation of the NPT in all its aspects.')

⁹² Ibid.

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