

Article36

Written evidence submitted by Article 36 House of Lords Select Committee on International Relations Inquiry: Nuclear Non-proliferation Treaty and Nuclear Disarmament

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Summary

1. Over recent years, new evidence has shown the risks associated with nuclear weapons to be higher than was previously understood. New understandings of the likelihood of erroneous use or accidents, new assessments of the catastrophic humanitarian, environmental and economic consequences that would result, and the increased possibilities of intentional use in a changing international environment, all contribute to this.
2. As a reasoned moral and legal response to these facts – and the gap in the international legal regime which had left nuclear weapons as the only weapons of mass destruction not categorically prohibited by an international treaty – the majority of the world's countries negotiated the Treaty on the Prohibition of Nuclear Weapons (TPNW) at the United Nations in 2017. In responding to a humanitarian imperative, the TPNW also follows other treaties that the United Kingdom has participated and shown leadership in: the Anti-Personnel Mine Ban Treaty and Convention on Cluster Munitions.
3. The TPNW is a step that, alongside others, contributes towards creating the global conditions for disarmament, through reinforcing and developing nuclear taboos, and strengthening states' legal commitments to stigmatise, prohibit and eliminate nuclear weapons for all. The TPNW is legally compatible with and mutually reinforcing of other steps and frameworks addressing nuclear disarmament, including the Nuclear Non-proliferation Treaty (NPT). It also provides a multilateral framework through which nuclear-armed states including the UK could eventually choose to eliminate their nuclear weapons. It is an international development that can contribute towards the world free of nuclear weapons that the UK is committed to alongside other states.
4. Notwithstanding the government's current position of retaining and renewing its nuclear weapons, it should now adopt a less confrontational tone and respond positively to the TPNW. Given its commitment to a rules-based international order and to creating the global conditions for disarmament, the government should reverse its current policy of non-engagement and criticism of the TPNW, and adopt an approach of constructive engagement – including by observing meetings and contributing expertise on issues such as verification – even if it will not be joining the TPNW soon. This would both demonstrate to other countries that the government takes their legitimate concerns about nuclear weapons seriously, and make a practical contribution towards disarmament.
5. Serious debate on and engagement with the TPNW in the context of broader nuclear policy is being undertaken in other countries and parliaments, including in NATO states. The present inquiry is a welcome development in the UK in this regard.

About Article 36

6. Article 36 (www.article36.org) is a specialist non-profit organisation, focused on reducing harm from weapons. Article 36 works with other civil society partners and governments

to develop new policies and legal standards for existing and emerging weapons. Our work is underpinned by rigorous, transparent and independent analysis of how weapons harm civilians, and how such harm can be prevented. Article 36 is part of the leadership teams of several international civil society disarmament coalitions, including the International Campaign to Abolish Nuclear Weapons (ICAN).

Current levels of nuclear risk

7. Assessing risk involves considering the combination of likelihood of a nuclear detonation occurring and its impact (itself a function of vulnerability and resilience).
8. Nuclear weapons are the most destructive technologies invented, carrying the ability to kill hundreds of thousands of people through a single detonation, and to cause long term and inter-generational harm to human health and the environment, and massive losses in economic terms. New studies have shown these impacts for today's globalised world to be even graver than was previously understood. For example, modern modelling has shown the likely effects of nuclear war on the global climate, and its potential to generate famine affecting 2 billion people, and research has demonstrated the disproportionate impact of nuclear weapons on women.¹
9. The use of nuclear weapons would pose insurmountable challenges to UN humanitarian coordination.² The International Committee of the Red Cross has repeatedly emphasised that there is no adequate humanitarian response to such an eventuality. Because of the catastrophic humanitarian consequences of nuclear weapons, the Red Cross movement agreed an action plan in 2017 calling on countries to join the TPNW.³ Ahead of 2018's NATO summit, the British Red Cross joined other Red Cross societies in a letter to NATO governments that: highlighted the TPNW as a response to the Red Cross's humanitarian concerns about nuclear weapons; noted its common goal with the NPT of "a world free of nuclear weapons in light of their unacceptable humanitarian consequences;" and called for more action to prevent the use of nuclear weapons.⁴
10. Meanwhile, the likelihood of a nuclear detonation is significant and growing. The changing international political context has seen the likelihood of deliberate use increase over past decades, including through recent developments such as new nuclear policies from Russia and the United States that emphasise 'lower yield,' more 'useable' nuclear weapons (that are in fact of a similar size to the weapon that devastated Hiroshima), and their actions in relation to the INF Treaty. Recent research has also shown the likelihood of erroneous use and accidents to be higher than previously thought.⁵ The use of

¹ See for example: Beatrice Fihn (ed.) (2013), 'Unspeakable suffering: the humanitarian impact of nuclear weapons,' Women's International League for Peace and Freedom, <http://www.reachingcriticalwill.org/resources/publications-and-research/publications/7422-unspeakable-suffering-the-humanitarian-impact-of-nuclear-weapons>; International Review of the Red Cross journal issue no. 899 on 'The human cost of nuclear weapons,' <https://www.icrc.org/en/international-review/human-cost-nuclear-weapons>

² John Borrie and Tim Caughley (2014), 'An Illusion of Safety: Challenges of Nuclear Weapon Detonations for United Nations Humanitarian Coordination and Response,' UNIDIR <http://www.unidir.org/files/publications/pdfs/an-illusion-of-safety-en-611.pdf>;

³ Movement of the Red Cross and Red Crescent (2017), 'Action Plan on the Non-use, Prohibition and Elimination of Nuclear Weapons,' http://rcrcconference.org/wp-content/uploads/2017/07/XXXXXX-171166_en-CoD-17-Annexed-Action-Plan-NW-Resolution_clean_final_EN.pdf

⁴ Letter dated 25 June 2018, on file with author

⁵ See for example: Patricia Lewis, Heather Williams, Benoît Pelopidas and Sasan Aghlani (April 2014), 'Too Close for Comfort Cases of Near Nuclear Use and Options for Policy,' Chatham House Report https://www.chathamhouse.org/sites/default/files/field/field_document/20140428TooCloseforComfortN

emerging technologies (such as cyber, autonomous and ‘Unmanned’ Underwater Vehicles (UUVs)) could contribute to both increased threat perceptions as well as the possibility of accidents.

11. Nuclear weapons – both those held by the UK and other countries – therefore remain a high-risk technology, and a serious threat to the population of the UK. Their impacts make these weapons deeply unacceptable for any responsible country that values the protection of civilians to possess. The international legal framework has long recognised nuclear weapons to be a global problem and source of danger, including through the NPT and the Nuclear Weapon Free Zone treaties. These facts mean that taking real steps towards multilateral disarmament is an urgent task for the government, in partnership with other countries.

The contribution of the Treaty on the Prohibition of Nuclear Weapons

12. The international community has sought to prohibit and eliminate weapons that are morally abhorrent – irrespective of whether they are perceived to have possible strategic or military utility – through international treaties. This is how biological and chemical weapons as well as anti-personnel landmines and cluster munitions have been approached, and it is the approach of the TPNW. Notwithstanding the government’s current position that it will not join the TPNW and does not find it a helpful step – which must be seen in the context of the UK’s policy of retaining nuclear weapons, as well as its continued position that certain aspects of international law do not apply to them⁶ – the TPNW is a reasonable response to the facts about these weapons. The TPNW builds and draws on previous treaties, particularly the ‘humanitarian disarmament’ law of the Anti-Personnel Mine Ban Treaty and the Convention on Cluster Munitions.
13. The UK government showed leadership in these previous treaties, especially in relation to other weapons of mass destruction. The TPNW is the only international weapons treaty to which the UK currently is not party, and did not participate in the negotiation of. Nevertheless, the TPNW is firmly rooted in and is now a part of the international nuclear non-proliferation disarmament regime. The majority of the world’s countries are likely to be working under its framework to achieve non-proliferation and disarmament goals when it enters into force.
14. Similarly to other treaties prohibiting particular weapons, the TPNW contains a comprehensive set of prohibitions covering the acquisition, production, testing, possession and use of nuclear weapons, as well as assistance with prohibited acts. It also provides a framework and pathways for stockpile destruction and elimination for nuclear-armed states.
15. It legally requires parties to maintain the safeguards agreements they have, thus setting a stronger standard than the NPT currently does – despite the common criticism that the TPNW carries lower verification standards.⁷ Addressing concerns around compatibility, it

[uclearUseLewisWilliamsPelopidasAghlani.pdf](#); Eric Schlosser (2013), *Command and Control: Nuclear Weapons, the Damascus Accident, and the Illusion of Safety*; Daniel Ellsberg (2018), *The Doomsday Machine*

⁶ The government continues to maintain that Additional Protocol I to the Geneva Conventions does not apply to nuclear weapons: see most recently Nuclear Weapons: Written question - HL11261 (November 2018) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-11-05/HL11261/>

⁷ For detailed analysis, see Eirini Giorgou (2018), ‘Safeguards Provisions in the Treaty on the Prohibition of Nuclear Weapons,’ *Arms Control Law* <https://armscontrollaw.com/2018/04/11/safeguards-provisions-in-the-treaty-on-the-prohibition-of-nuclear-weapons/>

was negotiated to be legally compatible with other nuclear non-proliferation and disarmament treaties, and as an 'effective measure' towards fulfilling Article VI of the NPT. The importance of the NPT in preventing proliferation are acknowledged in the TPNW's preamble. The UN Secretary-General and others have pointed out that the NPT and TPNW are fully compatible. States that join the TPNW will strengthen their legal commitments to non-proliferation, through endorsing prohibition and committing to maintain at least their current safeguards arrangements. Though some have raised 'forum shopping' as a risk, no NPT parties are intending to withdraw from that treaty in 'favour' of the TPNW, as this is not the TPNW's function.

16. To address the ongoing humanitarian legacy of past nuclear weapons use and testing, the TPNW also obliges states joining it to provide medical rehabilitation and psychological and socio-economic assistance to individuals affected by nuclear weapons use and testing, and to take steps to make safe and clean up affected environments. This could provide a renewed focus for sustainable development in communities affected by nuclear weapons. Establishing an international community of practice through a treaty framework has proved helpful to strengthening good practice amongst states, international organisations and civil society in supporting those affected by other weapons, such as anti-personnel landmines and cluster munitions.
17. The TPNW could have a significant impact on the private financing of nuclear weapons producers: this new international legal framework is likely to make investors consider these companies to be an increasingly risky proposition. A number of financial institutions (including in Belgium, the Netherlands and the US) have already cited the TPNW as the reason for ending their investments in companies associated with nuclear weapons production.⁸ Based on the negotiating record and states' positions on other treaties such as the Convention on Cluster Munitions, TPNW parties are likely to interpret the prohibition on assistance in the TPNW to cover financing.
18. Through its framing, provisions and anticipated impact as elaborated above, the TPNW – from its negotiation to its entry in to force, and the work that will take place beyond this – seeks to contribute as a step towards creating the conditions for nuclear disarmament, through challenging the legitimacy and increasing the stigma around nuclear weapons possession, in order to help erode the value that is attached to these weapons between states in international affairs, diminish the role and significance of nuclear weapons in military and security concepts as a result, and enable states to eventually give them up.
19. We know from experience with the other weapons of mass destruction that prohibition encourages progress towards elimination, and that building stigma over time is crucial to marginalising the role of weapons of mass destruction in relations between countries: as the former UN disarmament chief Angela Kane observed, no state today would boast of being a "biological-weapon state" or of benefiting from a "bioweapon umbrella."⁹ The TPNW thus represents a crucial development towards the vision of a world without nuclear weapons that the UK and all other UN member states are committed to, and which the UK is legally obliged to negotiate towards.
20. At a time of great international tensions, where certain states openly challenge multilateralism and a rules-based international system, the UK government has a choice: to engage constructively with signatories and parties to the TPNW and foster a culture of dialogue and compliance, or risk undermining initiatives under the TPNW that serve our common goals. As a strong supporter of international law as a matter of policy, the UK

⁸ See research by PAX, 'Don't Bank on the Bomb,' <https://www.dontbankonthebomb.com>

⁹ Angela Kane (2014), 'Disarmament: The Balance Sheet,' <http://www.converge.org.nz/pma/Angela-Kane,7April2014.pdf>

has an interest in ensuring the TPNW makes an effective contribution to strengthening the non-proliferation and disarmament regime, and creating the conditions for disarmament.

Current international engagement with the TPNW

21. The TPNW currently has 70 signatories and 19 ratifications/accessions,¹⁰ and will enter into force after 50 ratifications. Ratifications are currently proceeding at a faster pace than other international WMD treaties, and entry into force is expected around 2020. Support for the TPNW remains strong: at the 2018 session of the UN General Assembly, 126 states voted in favour of a resolution welcoming and calling on all states to join the TPNW, with 41 voting against and 16 abstaining.¹¹ The countries that have been providing leadership on the initiative include Austria, Brazil, Ireland, Mexico, New Zealand (who recently held a conference on universalization in the Pacific region), South Africa, and Thailand. Following entry into force, states will begin work under the treaty including through regular meetings of states parties to review progress on compliance and universalization, the first of which will also address outstanding issues around timelines for stockpile destruction and verification.
22. Several NATO countries and other UK allies are currently undertaking substantial work on or serious engagement with the TPNW.
23. 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.'¹² In Australia, the Labor party made a commitment in December 2018 to sign and ratify the TPNW when it next forms a government, taking into account the need for effective verification, interaction with the NPT, and the need for universal support for the TPNW.¹³ The parliament in the Netherlands requested in November 2018 that the government undertake a legal analysis on joining the TPNW. The Norwegian parliament requested the government in 2017 to investigate the possibilities to join the treaty – though a recently released report¹⁴ did not provide the substantial engagement that parliamentarians and civil society had called for.¹⁵ In Spain, Podemos recently achieved a commitment from the government to sign the TPNW, meaning that Spain could be the first NATO state to do so.¹⁶
24. States that aim to take on a 'bridge builder' role in international affairs are also engaging with the TPNW. In Sweden, the government mandated an inquiry into the consequences of joining the TPNW. Its report (released today) acknowledges that the TPNW "may have

¹⁰ United Nations Office for Disarmament Affairs Treaty Database, Treaty on the Prohibition of Nuclear Weapons <http://disarmament.un.org/treaties/t/tpnw>

¹¹ General Assembly: 45th Plenary Meeting, Item 101 A/73/510 Draft resolution XVI, Treaty on the Prohibition of Nuclear Weapons (December 2018) available at:

<http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com18/votes-ga/48.pdf>

¹² See analysis from the International Human Rights Clinic at Harvard Law School (2018), 'Nuclear Umbrella Arrangements and the Treaty on the Prohibition of Nuclear Weapons,'

[http://hrp.law.harvard.edu/wp-](http://hrp.law.harvard.edu/wp-content/uploads/2018/06/Nuclear_Umbrella_Arrangements_Treaty_Prohibition.pdf)

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¹³ See ICAN (December 2018), 'Australian Labor Party commits to joining Nuclear Ban Treaty,'

<http://www.icanw.org/campaign-news/australian-labor-party-commits-to-joining-nuclear-ban-treaty/>

¹⁴ See Norwegian Ministry of Foreign Affairs (2018), 'Utredning om Traktaten om forbud mot kjernevåpen,' https://www.regjeringen.no/no/aktuelt/utredning_traktat/id2614526/

¹⁵ See Norwegian Academy of International Law (2018), 'The TPNW and its implications for Norway,' <https://legermotatomvåpen.no/filer/tpnw-implications-for-norway-25-sept-2018.pdf>

¹⁶ See ICAN (December 2018), 'Could Spain be the first NATO State to sign the Nuclear Ban Treaty?,' <http://www.icanw.org/campaign-news/could-spain-be-the-first-nato-state-to-sign-the-tpnw/>

a profound moral and political impact,” though it recommends that Sweden does not join at this point – partly due to fears of political consequences with NATO states.¹⁷ In Switzerland, both houses of parliament tasked the government to join the TPNW without delay in late 2018 (in response to the government adopting the position in August 2018 that it would not sign in order to maintain the option of joining a ‘nuclear umbrella’).¹⁸

25. Within the UK itself, the established Church of England called on the government to respond positively to the TPNW in a motion passed at the General Synod in July 2018,¹⁹ and over 100 parliamentarians and the city of Manchester have endorsed pledges for the TPNW.

Ways forward for the United Kingdom

26. The government should work proactively towards creating the conditions for multilateral disarmament, including through better describing what these conditions would look like. The UK has played a highly important, useful and proactive role in disarmament verification initiatives in recent years – an important step in this regard – on which further work and steps such as the funding of research should be encouraged. Nevertheless, there are other ways in which the government can usefully contribute – and these should not be limited to the subjects and forums with which the UK feels most comfortable, but involve engaging with the international landscape on nuclear weapons as a whole.
27. With respect to the TPNW, as a responsible state that prioritises a rules-based international order, it is not tenable for the UK to either ignore or seek to undermine a new international treaty that promotes the vision of a world without nuclear weapons, even if the government rejects the treaty’s application to the UK. Rather, the UK should seek to build bridges and acknowledge the concerns of the majority of the world. Given that the humanitarian and environmental impacts of any use of nuclear weapons would not be contained by national borders, and could have global effects, all states are legitimate stakeholders on the issues of nuclear non-proliferation and disarmament. The UK should therefore be wary of dismissing the positions of other states as expressed through the TPNW, or of giving off the impression that only certain states’ security interests need to be considered when it comes to nuclear weapons: the issue of nuclear security and risk does not solely relate to questions of stability or balance of power between a few countries.
28. The problem of nuclear weapons demands global solutions, and it would be beneficial to broaden out debate from a focus on the UK’s nuclear weapons in particular, to the international context and how upholding the rules-based international order can be best served on this issue in a changing world. In the context of challenges to established institutions and multilateralism, it is ever more important to engage with multilateral initiatives that are seeking to make the world a safer place, even if they do not align with current government policy. Parliament has a key role in facilitating these debates and encouraging the government to engage more constructively with the TPNW – including through the recommendations of its committees.

¹⁷ Available with an executive summary in English at: https://www.regeringen.se/48f047/contentassets/55e89d0a4d8c4768a0cabf4c3314aab3/rapport_l-e_lundin_webb.pdf?fbclid=IwAR2saSQ5JTe0-jbgaMQN1xkJKmpbtR93HHe9ihV_ZD4fOL8cD5nDBPK5D2s

¹⁸ See INCA (December 2018) ‘Both houses of Swiss Parliament call on government to join the Nuclear Ban Treaty immediately,’ <http://www.icanw.org/campaign-news/both-houses-of-swiss-parliament-call-on-government-to-sign-the-nuclear-ban-treaty/>

¹⁹ See Christian CND (July 2018), ‘General Synod Passes Nuclear Ban Motion,’ <http://christiancnd.org.uk/2018/07/08/synod2018/>

Key recommendations

29. In the short term, **the government** should adopt a constructive approach towards the TPNW, acknowledging the concerns that led to it and that it is now part of the international nuclear non-proliferation and disarmament architecture. This should involve:
- a. Attending future meetings of the TPNW as an observer, to follow developments, avoid misconceptions and safeguard the UK's disarmament and non-proliferation objectives;
 - b. Providing technical expertise and other input within the TPNW framework where relevant, for example to discussions of verification issues (given valuable UK work in this sphere);
 - c. Contributing to work to address ongoing human and environmental harm from past nuclear testing. This should include releasing any assessments of the impact of UK tests it holds that have not been published, but could now be released;
 - d. Fostering a dialogue with countries and organisations working on the TPNW on how the treaty can make an effective contribution to disarmament – including considering how it can make a positive, reinforcing impact on the disarmament pillar of the NPT, and bringing these discussions to the NPT.
30. In the long term, **the government** should work, alongside other states, towards signing and ratifying the TPNW, which now provides a framework for multilateral disarmament.
31. **Parliament, including its committees**, should provide support and scrutiny for the development of government policy in this area. It should work to make the UK public more aware of the UK's commitments on nuclear non-proliferation and disarmament, the global picture of risk, the latest international developments such as the TPNW, and the government's position on them.