First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons

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Ways to strengthen international security and pursue nuclear disarmament using the Treaty on the Prohibition of Nuclear Weapons

Working paper submitted by Acronym Institute for Disarmament Diplomacy (AIDD)

Background

1. In the past twenty-five years, leaders responsible for at least six of the nine nuclear arsenals have made nuclear threats while involved in military 'operations' against non-nuclear States and/or nuclear-armed rivals. As nuclear threats escalate, so do nuclear dangers and risks of nuclear weapon use and ensuing catastrophic humanitarian and security impacts worldwide. Preventing nuclear weapon use and war are existential objectives for the United Nations and the world's peoples.

2. There is growing public and political anxiety about nuclear weapons possession facilitating military aggression, attacks on nuclear facilities, and the launching of nuclear-armed strikes. Public fears are exacerbated by conflicts in Europe, the Pacific, South Asia, North-East Asia and the Middle East that involve one or more of the nine nuclear-armed States. In addition, nuclear weapons are known to be located in at least five more countries, as part of military alliances. Nuclear-weapon-related components and materials are transported and shared in ways that increase the risks of their acquisition and use by non-state actors.

3. As the dangers of nuclear weapons use rise, some governments and NGOs are trying to revive advocacy for certain nuclear-armed governments to make 'no first use' pledges. Some also (or instead) seek negotiations on legally binding security assurances, as they have called for in various fora since the Non-Proliferation Treaty (NPT) was negotiated in the 1960s. Though a few nuclear-armed governments have given these or similar promises in the past, they have failed to instil trust and confidence, primarily because nuclear-related policies and operations failed to match the declaratory claims.

4. The Treaty on the Prohibition of Nuclear Weapons provides the essential prohibitions, principles and framework for accomplishing the total elimination of the world's nuclear arsenals. The TPNW provides the most

appropriate and applicable legal framework to strengthen security and confidence through reinforcing norms and taboos against nuclear use and building up shared capabilities in monitoring and verification technologies and mechanisms. As the TPNW moves forward to institutionalise and fulfil the legal, technical and implementation principles and provisions outlined in the Treaty text, it will increase global capabilities to prevent and deter any and all threats and uses of nuclear weapons, whether emanating from government leaders or non-state actors.

5. To universalise and fulfil the TPNW's humanitarian and security purposes and objectives, governments and civil society must work together to stigmatise nuclear possession, prevent nuclear weapon use, and develop effective implementation incentives, verification systems and compliance capabilities. These tasks need to start with the first meeting of TPNW States Parties in Vienna.

6. In addition to highlighting the impacts of nuclear weapons and risks attached to nuclear deterence policies and ideologies, TPNW States Parties now need to chart effective steps and tasks for building a strong and credible TPNW implementation regime. Their objectives must be to open new security conversations, and encourage and convince nuclear-armed and dependent States that joining and contributing to the TPNW will strengthen their national security as well as global survival, peace and security.

7. What is needed now, and for the future of our shared planet, are ways to engage effectively with the nuclear-armed States to increase their accountability and help them to undertake the necessary steps to remove the dangers of nuclear annihilation and eliminate these weapons that threaten all life on Earth. This is a humanitarian imperative that must be undertaken without conferring impunity or further power on anyone who possesses or wields nuclear weapons.

8. The Acronym Institute for Disarmament Diplomacy (AIDD) has worked for decades to reduce nuclear dangers by strengthening international law and diplomacy. As well as raising public awareness about nuclear dangers and alternative ways to tackle a range of military-industrial threats to human security, peace and environmental sustainability, AIDD has contributed practical strategies for several disarmament treaties, along with proposals to strengthen implementation and verification. These include the Comprehensive Nuclear-Test-Ban Treaty (CTBT), NPT, and of course the TPNW. See also AIDD Director's recent analysis on the TPNW's text and implications for governments that currently depend on nuclear-armed defence postures, titled: 'Nuclear weapons are banned: What does this mean for Britain?'

Summary of key points and recommendations

(a) The TPNW's Article 1 prohibitions mean that under International Humanitarian Law it is illegal to use or threaten to use nuclear weapons. This unequivocal and explicit prohibition needs to be reinforced and promulgated more widely;

(b) Taking Article 1 together with Article 6 on victim assistance and environmental remediation and Article 7 on international cooperation and assistance, the TPNW enshrines and mandates universally applicable positive and negative security assurances for all. Attempts to revive calls for new negotiated instruments on no first use or legally binding security assurances waste resources and fail to make progress. The priority should be to strengthen and embed these legal prohibitions, norms and requirements, and use them to take forward legally-binding, universally-applicable positive and negative security assurances that will carry increasing weight as TPNW Parties and institutional capabilities grow;

(c) Early establishment of a scientific and verification advisory group with relevant international expertise and skills would enhance the TPNW's credibility and help to develop effective and accountable competencies for overseeing and verifying irreversible nuclear disarmament, assistance to victims, environmental remediation, universality and compliance requirements;

(d) An implementation support unit (ISU) under United Nations auspices would strengthen the TPNW's effectiveness and credibility. If feasible, the TPNW ISU should be co-located with the IAEA and CTBTO in Vienna, where synergies between these three organisations and others could enhance global security capabilities and objectives;

(e) In filling these institutional roles, it will be important to establish the equal, full and effective participation of both women and men, taking into account the TPNW's essential objectives and purposes enshrined in the preamble;

(f) As a priority security imperative, Governments and stakeholders need to recognise today's nuclear risks and dangers, prevent military attacks on nuclear installations and facilities, and demand that all nuclear weapons be taken off prompt and hair-trigger alert status, pending their total elimination.

(g) Governments and civil society must urge all States to abide by and contribute towards fulfilling the TPNW's objectives and provisions, including the necessity for all nuclear-armed leaders to pledge not to use or threaten to use nuclear weapons under any circumstance.

The necessity to establish adaptable verification and institutional capabilities for TPNW implementation

9. In order to make the long-sought nuclear abolition treaty into a legal reality, the TPNW's framers and negotiators had to contend with difficult diplomatic and political limits, including resources, timing and participation. These challenges affected how much detail could be agreed on technical and institutional issues, including verification. Making a virtue of necessity, negotiators opted to achieve the best achievable Treaty they could, before the window of opportunity closed. They accomplished this by ensuring that the essential obligations and principles were clearly stated in the text, while some practicalities and mechanisms were left relatively undefined. In a fast-changing technological environment, this adaptive approach has many benefits. It also carries challenges for States Parties, who need to develop adaptable systems to meet the technical, political, legal and institutional challenges faced now, while also building credibility and capacities to ensure the Treaty's effectiveness for the future.

10. Article 1 provisions take the legal requirement not to use or threaten to use nuclear weapons beyond declaratory rhetoric into verifiable obligations to refrain from and prevent not only the activities that enable the acquisition, deployment and use of nuclear weapons to be carried out, but also constrain the activities of organisations, companies and people who might be tempted to assist anyone to acquire or use nuclear armaments in any form.

11. Articles 2 - 5 set out the basic pathways for verifiable nuclear disarmament, while other articles deal with national implementation, universality, assistance, remediation, relationship with other treaties etc. Article 4.6 of the Treaty refers to roles for the 'competent international authority or authorities'. The plural option gives broad leeway to TPNW parties to call on different organisations with a range of relevant skills and competencies. This is important, as it enables adaptable,

cost-effective arrangements for institutional support, monitoring and implementation of the Treaty to be developed and applied from the start. The option to establish a fully-fledged and resourced 'Organisation for the Prohibition of Nuclear Weapons' should remain on the table for future consideration when international and political conditions make this possible.

12. AIDD supports the ideas put forward by Princeton University's Program on Science and Global Security for early establishment of a scientific and technical advisory board. Developing an international group or body of this kind would enable TPNW parties to draw on international expertise and skills to develop and put in place effective and accountable competencies and systems to achieve, monitor and verify the secure, environmentally responsible and irreversible nuclear disarmament, along with other humanitarian and implementation requirements for the present and future. If initiated now, this body can provide an important forum for cooperation between TPNW States Parties, signatory and non-signatory States, international organisations and civil society.

13. AIDD also advocates establishment of an implementation support unit (ISU) under United Nations auspices. This could be initiated now at relatively modest cost, to give dedicated support for the TPNW as it develops. As with the ISUs set up for the Biological and Toxin Weapons Convention (BTWC) in 2006, and the Convention on Certain Conventional Weapons (CCW) in 2009, a TPNW ISU could be managed through UNODA. It would also benefit from being co-located with the CTBTO and IAEA in the Vienna International Centre, which would facilitate useful synergies and cooperation, especially with regard to nuclear materials accounting and nuclear-related explosions.

14. As the TPNW grows in normative and legal force, it will reinforce support for the CTBTO's International Monitoring System and robust verification capabilities, which are necessary to implement both treaties' prohibitions on nuclear testing. A close relationship would also facilitate mutually advantageous engagement to support environmental remediation arising from harm caused by decades of nuclear testing in many places around the world, common endeavours that are also required by Articles 6 and 7 of the TPNW. Drawing on the CTBTO's carefully developed systems, training and on-site inspection manuals and field exercises would also be helpful for implementing the TPNW. Working in synergy would strengthen both Treaties, and enhance international efforts in nuclear security, emergency planning, early warning, monitoring, detecting and locating radiation releases, and preventing other nuclear-related risks to human lives and security.

15. The TPNW would need to draw lessons from South Africa's nuclear disarmament process, as well as experiences gained through the UN Special Commission on Iraq (UNSCOM), and its successor, the UN Monitoring, Verification and Inspection Committee (UNMOVIC). Other relevant organisations to liase with include the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC), nuclear-weapon free zone agencies such as OPANAL (the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean), and the Organisation for the Prohibition of Chemical Weapons (OPCW).

Taking forward relevant steps for implementing the TPNW's disarmament provisions

16. Implementing the TPNW and eliminating all nuclear arsenals will require many of the steps that were negotiated and adopted by NPT States Parties in 1995, 2000 and 2010, which in turn were drawn from international civil society studies, the New Agenda Coalition's proposals and the International Weapons of Mass Destruction (WMD) Commission, among others.

17. As TPNW States Parties start work on developing the legal, technical and institutional capabilities the Treaty needs to oversee and assist States to undertake nuclear disarmament safely and securely, care must be taken to recognise which steps will take global security and humanitarian objectives forwards, and which 'false friends' might serve to maintain nuclear weapons possession and keep open options of nuclear use that undermine human and environmental security and International Humanitarian Law.

18. Treaties are legal as well as normative and practical instruments for mutual security and benefit. While every effort must be made to implement laws, sometimes they get broken. As relevant for international security as for communities and countries, the answer to law-breakers is not to ditch the law but to find better ways to make it work. The TPNW stands firm now with the NPT and CTBT as essential to collective endeavours to build peace and security without nuclear weapons. All three treaties require practical steps to be taken by the nuclear-armed States and nuclear alliance members in cooperation with nuclear free States and civil society.

19. In this regard, it is relevant to note that at least five of the nine nuclear-armed states, along with members of today's nuclear alliances, already have nuclear disarmament obligations under the NPT. Others have contributed to UN-related discussions and Non-Aligned Movement initiatives over many years. As was clarified by the 2000 NPT Review Conference, the necessary steps can be accomplished in various ways: some are likely to be taken independently (unilaterally) for national political reasons; some can be taken forward bilaterally (e.g. US-Russia, India-Pakistan, or other bilateral configurations in today's complex strategic environment); and some may require joint, plurilateral or multilateral engagement, e.g. for negotiated objectives such as agreements to end the production, stockpiling and use of weapons-usable fissile materials; or to enhance regional security, e.g. the long-standing commitments on a Middle East WMD-free zone, or further efforts to establish nuclear-weapon-free zones in risk-laden flashpoint areas, such as North-East Asia, Europe, South Asia or the Pacific.

20. Steps to implement the nuclear disarmament, security and nonproliferation objectives enshrined in the TPNW, CTBT and NPT are not linear but integrative. At their best, they provide mutual assurance and multilateral incentives to accomplish further steps. Some strategies build, others dig, remove obstacles and push. To be successful, we must engage at multiple points: political, legal, environmental, diplomatic, moral and humanitarian. To move forwards we must identify and remove the obstacles and blockages.

21. Implementing the TPNW will be as much of a challenge as the diplomatic, national and legal processes that led to its entry into force. Like all security approaches, treaties require collective responsibility, adaptable tools, and ongoing vigilance to keep ahead of abusers and disarm violent aggressors.