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Zusammenfassung

Kernwaffen gehören zu den tödlichsten Waffen, die die Menschheit hervorgebracht hat, und der Vertrag über die Nichtverbreitung von Kernwaffen sowie der kürzlich verabschiedete Vertrag über das Verbot von Kernwaffen spielt eine große Rolle für die Abrüstung und Nichtverbreitung der Kernwaffen. Obwohl beide Verträge im Bereich der Atomwaffen angesiedelt sind, gibt es zahlreiche problematische Punkte, die es zu verstehen gilt, da diese beiden Instrumente eine entscheidende Rolle bei der Verwirklichung einer atomwaffenfreien Welt spielen werden. In dieser Arbeit werden hauptsächlich drei der wichtigsten Bestimmungen des NVV und des TPNW untersucht und verglichen. Dazu gehören die Fähigkeit der Staaten, Kernwaffen zu teilen und zu erhalten, ihre Kernwaffen abzurüsten und schließlich zu beseitigen, sowie die Fähigkeit der Staaten, aus diesen Verträgen auszusteigen. Das erste Kapitel dieser Arbeit beginnt mit einigen Hintergrundinformationen und geht dann auf die Geschichte und Entwicklung dieser Verträge ein. Es ist wichtig, den historischen Hintergrund und die Entstehung dieser Verträge zu verstehen, da sie die zentralen Werte und Bestrebungen widerspiegeln, die die Vertragsparteien mit ihrer Ratifizierung erreichen wollen. Das zweite Kapitel gibt einen Überblick über die anderen wichtigen internationalen Entwicklungen im Bereich der Kernwaffen, und über die Einrichtung der NWFZ und die Anerkennung der Abrüstungsnorm als Völkergewohnheitsrecht. Diese Analyse dient dem Zweck, es zu veranschaulichen, wie der TPNW und der NVV tief in einen breiteren Rahmen von Abrüstungsbemühungen eingebettet sind und wie wichtig diese Verträge für die normative und rechtliche Entwicklung des Völkergewohnheitsrechts sind. Das dritte Kapitel enthält eine vergleichende Analyse der Bestimmungen zur nuklearen Teilhabe, die sowohl im NVV als auch im TPNW erwähnt werden, vor allem unter rechtlichen Gesichtspunkten und Sicherheitsbedenken durch die Lagerung von Waffen in Ländern mit Sicherheitsrisiken wie der Türkei, zusammen mit weiteren Analysen wie der zweideutigen Auslegung der Texte, die bei der Abfassung dieses Artikels verwendet wurden. Das vierte Kapitel ist eine umfassende Untersuchung der Abrüstungsbestimmungen in beiden Verträgen, da Artikel 6, der den Kernwaffenstaaten keinen Zeitrahmen für die nukleare Abrüstung vorgibt, mehrfach kritisiert wurde. Diese Diskussion ist mit der unbefristeten Verlängerung des Vertrags von 1995 verknüpft, die den zahlreichen Diskussionen über nukleare Abrüstung

beeinflusst hat. Das nächste Kapitel befasst sich mit der Richtlinie über den Ausstieg aus diesen Instrumenten. Die Bestimmung über den Austritt aus dem Vertrag erregte große Aufmerksamkeit, als die Volksrepublik Korea als erstes Land aus dem Vertrag ausstieg. Sowohl der NVV als auch der TPNW ermöglichen den Staaten den Austritt aus den Verträgen, wenn sie ihre obersten Interessen gefährden, Die Beiden sind aber unterschiedlich geregelt, wie in diesem Abschnitt untersucht wurde. Schließlich wurde die Dynamik zwischen dem NVV und dem TPNW als Instrument der Zusammenarbeit oder als Quelle von Konflikten untersucht, um aufzuzeigen, wie diese beiden Verträge in diesem Bereich miteinander interagieren können.

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Abstract

Nuclear Weapons are one of the most deadly weapons humanity has produced and the Treaty on the Nonproliferation of Nuclear Weapons and the recently adopted Treaty on the Prohibition of nuclear weapons have been central to disarmament and non-proliferation. Although both these treaties in the domain of disarmament aim to eliminate nuclear weapons, they have multiple critics which are very important to understand as both of these instruments will play a pivotal role to help achieve a world free of nuclear weapons. This thesis mainly aims to explore and compare three of the main provisions in the NPT and the TPNW. These include the ability of the states to share and receive nuclear weapons, disarm and eventually eliminate their nuclear weapons and the ability of states to withdraw from these treaties. The first chapter of this thesis begins with some background information and then delving into the history and development of these treaties. It is essential to understand the historical background and how these treaties emerged as they reflect the core values and aspirations state parties wish to achieve by ratifying them. The second chapter reviews the other major international developments in the realm of nuclear weapons, such as the International Court of Justice Advisory Opinion, establishment of the Nuclear Weapon Free zones and recognition of the disarmament norm under customary international norm. This analysis serves the purpose to illustrate how the TPNW and NPT are deeply embedded into a broader framework of disarmament efforts and how these treaties are important in normative and legal development of customary international law. The third chapter includes a comparative analysis of the nuclear sharing provision mentioned in both the NPT and TPNW, mainly from legal aspects and security concerns raised by storing nuclear weapons in the countries subject to security risks such as Turkey, along with further analysis such as the ambiguous interpretation of the texts used in drafting this article. The fourth chapter is a comprehensive examination of the disarmament provision in both of these treaties, as there have been multiple critics against Article 6 which does not specify a timeline for the nuclear weapon states to pursue nuclear disarmament. This discussion is intertwined with the indefinite extension of the treaty in 1995 which has influenced multiple discussions regarding nuclear disarmament. Subsequently, the next chapter aims to investigate the

directive of withdrawal from these instruments. The provision of withdrawal drew a lot of attention when the Democratic People's Republic of Korea became the first country to end their membership from the treaty. The NPT and TPNW both allow the states to withdraw their membership from the treaties if they jeopardise their supreme interests but are governed differently which has been examined in this section. Finally, the dynamics between the NPT and the TPNW as instruments of cooperation or sources of conflict have been examined, highlighting how both of these treaties can interact with each other in this field. This thesis aims to provide a better understanding of the interactions and challenges between NPT and the TPNW and how their interplay would be important to achieve a world without nuclear weapons.

Keywords: *iaea, ICAN, npt, nuclear weapons, tpnw*

Acknowledgement

During my four years of living in Japan I had the opportunity to visit the Hiroshima Peace Museum Memorial. This experience left a very deep impact on me as I could witness the severe negative effects caused by Nuclear Weapons. This experience highly motivated me to pursue research on the broader impact of nuclear weapons on a global scale and of course the nuclear disarmament policies. I am very thankful that I am one of the people who got the profound opportunity to experience this visit to Hiroshima and Nagasaki as it highly shaped my understanding and analysis for this research.

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List of Abbreviations

BITS- Berlin Information Center for Transatlantic Study
CISAC- Center for International Security and Cooperation
CTBT- Comprehensive Test Ban Treaty
DPRK- Democratic People's Republic of Korea
FAS- Federation of American Scientists
IAEA- International Atomic Energy Agency
ICAN- International Campaign to Abolish Nuclear Weapons
ICJ- International Court of Justice
ICRC- International Committee of the Red Cross
ISIS- Islamic State of Iraq and Syria
IHL- International Humanitarian Law
MAD- Mutually Assured Destruction
NAIL- Norwegian Academy of International Law
NATO- North Atlantic Treaty Organisation
NNWS- Non-Nuclear Weapon States
NWFZ- Nuclear Weapon Free Zone
NWS- Nuclear Weapon States
NPG- Nuclear Planning Group
NPT- Treaty on the Non-Proliferation of Nuclear Weapons
PCIJ- Permanent Court of International Justice
P5- Permanent five members of the security council
SALT- Strategic Arms Limitation Talks
TPNW- Treaty on the Prohibition of Nuclear Weapons
UK- United Kingdom
UN- United Nations
UNGA- United Nations General Assembly
UNSC- United Nations Security Council
US- United States of America
USSR- Union of Soviet Socialist Republics

VCLT- Vienna Convention on the Laws of Treaties

WMD- Weapons of Mass Destruction

WHO- World Health Organisation

被爆者 “Hibakusha”- Survivors of the atomic bombing

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Chapter 1- Introduction and Background Information

Introduction

It was 5:29 in the morning on 16th July 1954 when the lethal secrets of atoms were revealed with “The Gadget”, by Robert Oppenheimer who was the scientific leader of a multinational initiative to develop atomic bombs, the Manhattan Project. It was the beginning of a new generation which would change the future generations for the worse. Oppenheimer’s feat in developing these nuclear weapons are accompanied by a strong sense of apprehension as his colleague Leó Szilárd resonated with his feelings by portraying, *“That night I knew the world was headed towards sorrow”* along with Oppenheimer himself saying *“We knew the world would not be the same”*¹ Barely three weeks after on 6th and 9th August, all of their fears came true when the Second world war had a devastating end with a deadly attack on the two cities of Hiroshima and Nagasaki in Japan. These single atomic bombs were dropped on the city Hiroshima at 0815 on the morning of 6 August 1945. The attack came as a complete surprise on Japan forty five minutes after the “all clear” had been sounded from a previous alert. People were commuting to work and children to the school, thinking it would be a regular day but not thinking that they would witness the end to an era. The bomb called ‘Little Boy’ was dropped by a USAAF B-29 bomber, Enola Gay, piloted by U.S. Army Air Force Colonel Paul Tibbets, Jr. The ‘Little Boy’ was an uranium bomb type ‘gun’ – the explosion was held by shooting one chunk of a very active material - uranium 235 -into another one in a long tube and its collision made the uranium start a chain reaction.² The bomb weighed around 4 tons and its diameter was approximately 71 cm. The bomb caused damage to 90% of the city and resulted in the deaths of thousands of people.³ In 1945, in Hiroshima lived around 280,000-290,000 citizens and 34,000 soldiers. The exact numbers of people killed due to the explosion is not clear. Around 70,000 people died instantly due to explosion,

¹ Rauf, T. (2023). Ending the ‘perpetual menace’ of nuclear weapons: The nuclear non-proliferation treaty. In P. Cotta-Ramusino, et al. (Eds.), *Nuclear risks and arms control: Problems and progresses in the time of pandemics and war* (Springer Proceedings in Physics 291). Springer. <https://doi.org/10.1007/978-3-031-29708->

² Science Behind the Atom Bomb” Nuclear Museum, Atomic Heritage Foundation, Thursday, June 5, 2014 <https://ahf.nuclearmuseum.org/ahf/history/science-behind-atom-bomb/>

³ “Little Boy Hiroshima”, National Museum of the US; Navy, <https://www.history.navy.mil/content/history/museums/nmusn/explore/photography/wwii/wwii-pacific/bombardment-japan/bombs-atomic/little-boy-hiroshima.html>

heat, and radiation. By the end of 1945, the number of victims likely crossed 100,000, and in five years, it was around 200,000 due to the long-term effects.⁴ On the first day of the bombings itself the hospitals were destroyed and the medical teams disappeared and just in Hiroshima the situation was much worse as over 90 percent of the medical staff, along with nurses and pharmacists had to face a tragic end.⁵ Captain Robert Lewis – co-pilot of the Enola Gay – was deeply affected by the disaster and he wrote in his log: “My God, what have we done? ”. Three days after this tragedy, the US government decided to drop the next bomb on Nagasaki.⁶

This city located in the South of Japan also faced a similar instance. The Nagasaki Prefectural Report described the explosion something like “*The day was clear with not very much wind--an ordinary midsummer's day. The strain of continuous air attack on the city's population and the severity of the summer had vitiated enthusiastic air raid precautions.*”.⁷ On August 9 at 3:47 in the morning, the B-29 bomber Bock's Car took off from Tinian carrying the atomic bomb known as "Fat Man" on board the Great Artiste. The bomb was detonated at 11:02. The "Fat Man" bomb weighed approximately 450 kilograms and had a diameter of 152 centimetres. It was detonated with a force of 21 kilotons, making it 40% stronger than the "Little Boy".⁸ The two thriving cities of Hiroshima and Nagasaki met with horrifying stories of loss and selflessness. These were the missiles of total destruction which had several long lasting effects on Japan and took the lives of over 105,000 people and caused over 190,000 injuries.⁹ The radiation from this attack also had very long lasting impacts such as increased incidence of breast cancer. Tokunaga et. all have identified an increased rate of breast cancer among the survivors as 807 breast cancer cases were observed from 1950 to 1985, clearly highlighting severe long-term

⁴ AtomicArchive, The Atomic Bombings of Hiroshima and Nagasaki. Retrieved from https://www.atomicarchive.com/resources/documents/med/med_chp10.html

⁵ Tomonaga, M. (2019). The Atomic Bombings of Hiroshima and Nagasaki: A Summary of the Human Consequences, 1945-2018, and Lessons for *Homo sapiens* to End the Nuclear Weapon Age. *Journal for Peace and Nuclear Disarmament*, 2(2), 491–517. <https://doi.org/10.1080/25751654.2019.1681226>

⁶ “The Legacy of Hiroshima and Nagasaki” <https://www.globalzero.org/legacy-of-hiroshima-and-nagasaki/index.html>

⁷ AtomicArchive. (n.d.). The effects of atomic bombs on Hiroshima and Nagasaki. Retrieved July 6, 2024, from https://www.atomicarchive.com/resources/documents/bombing-survey/section_II.html

⁸ National Museum of the U.S. Navy. (n.d.). *Fat Man Nagasaki*. U.S. Navy. Retrieved from <https://www.history.navy.mil/content/history/museums/nmusn/explore/photography/wwii/wwii-pacific/bombardment-japan/bombs-atomic/fat-man-nagasaki.html>

⁹ AtomicArchive, The Atomic Bombings of Hiroshima and Nagasaki. Retrieved from https://www.atomicarchive.com/resources/documents/med/med_chp10.html

health impacts caused by the nuclear attacks.¹⁰ Furthermore, the pregnant women who witnessed the deadly bombings in Hiroshima and Nagasaki had a very high risk of miscarriage, along with children more likely to suffer from intellectual disabilities and were more likely to have cancer.¹¹

This was arguably the most deadly attack in the history of humanity and occurred on a scale which has never been witnessed before. Although the United States was the first country to acquire the nuclear weapons, the policymakers and experts at that time knew that it would only be a matter of time till other states also acquire these deadly weapons and in no time the Soviet Union conducted their first nuclear test at the Semipalatinsk Test Site in Kazakhstan, which later became an important location for the Soviets to conduct nuclear tests from 1949 and 1989. This started a nuclear arms race between the US and the USSR and eventually over a period of four decades 456 nuclear nuclear tests were conducted with 340 carried out underground and 116 in the atmosphere.¹² The next country to conduct nuclear tests was the United Kingdom to maintain their influence as a global power and develop their own independent security policy from the US as the USSR controlled most of eastern Europe.¹³ Subsequently, the next major power in Europe, France also entered the nuclear test arena by conducting their nuclear test on 13th February, 1960 called the "Gerboise Bleue" to assert their position as a leading military force in Europe.¹⁴ China also eventually followed by conducting their first nuclear test "596" just after four years in 1964 at the Lop Nur Test Site, in order to assert their position as a major power in Asia and retaliate threats from the US.¹⁵ There were hundreds of nuclear tests conducted by these countries and belligerent nuclear doctrines included possibilities

¹⁰ Tokunaga, M., Land, C. E., Tokuoka, S., Nishimori, I., Soda, M., & Akiba, S. (1994). *Incidence of female breast cancer among atomic bomb survivors, 1950-1985*. Radiation Research, 138(2), 209. <https://doi.org/10.2307/3578591>

¹¹ International Campaign to Abolish Nuclear Weapons. (n.d.). *Hiroshima and Nagasaki bombings*. Retrieved August 27, 2024, from https://www.icanw.org/hiroshima_and_nagasaki_bombings

¹² NTI. (n.d.). Semipalatinsk Test Site. Nuclear Threat Initiative. Retrieved July 11, 2024, from <https://www.nti.org/education-center/facilities/semipalatinsk-test-site/>

¹³ Central Office of Information. (2006, May 3). Operation Hurricane [Video]. The National Archives. <https://media.nationalarchives.gov.uk/index.php/operation-hurricane-2/#:~:text=The%20explosion%20of%20the%20first,the%20Monte%20Bello%20island%20group>

¹⁴ Tertrais, B. (2020). *French nuclear deterrence policy, forces, and future: A handbook* (Recherches & Documents No. 4/2020). Fondation pour la recherche stratégique. <https://www.frstrategie.org/sites/default/files/documents/publications/recherches-et-documents/2020/202004.pdf>

¹⁵ Atomic Heritage Foundation. (2018, July 19). *Chinese nuclear program*. Retrieved from <https://www.atomicheritage.org/history/chinese-nuclear-weapons-program>

of pursuing first strike on other parties. With the emergence of dangerous situations such as the Cuban Missile Crisis, there was a need to negotiate and create a multilateral tool instead of depending on bilateral agreements or defence policies of a single country to stop proliferation and put the nuclear weapons on halt ¹⁶, in order to make sure that an attack like Hiroshima and Nagasaki does not take place again. After years of negotiations, multilateral negotiations ultimately resulted in the adoption of Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in 1968.

Significance of the Study

The geopolitical climate in 2024 remains volatile and uncertain with ongoing conflicts in different parts of the world such as in Ukraine and Russia which has worsened the relationship between Russia and NATO, while on the other hand the State of Israel which is a strong ally to the US and Palestine continue to have crippled relations in a very fragile environment where thousands of deaths have been witnessed. Meanwhile, on the other side of the world in the Korean peninsula the nuclear program of North Korea, the only country that withdrew their membership from the Treaty on the non-proliferation of the Nuclear weapons, continue to pose serious threats to global security and creates a terrifying situation that could further involve major powers like the United States and the People's Republic of China on a much deeper level than now.

In a globalised world it can be said that these events are not confined to a region anymore but are more interconnected with major powers and complex dynamics which could lead to a complicated landscape between the countries. With advancing militaries around the world and introduction of weapons such as the WMD's (Weapons of Mass Destruction), along with the rise of new technologies such as cyber warfare, biological and nuclear weapons makes the existing security environment even more complicated. The global non-proliferation regime in these geopolitical conditions face severe challenges. According to ICAN (International Campaign to Abolish Nuclear Weapons), there are still nine countries, namely China, India, Russian Federation, United States, Israel, North

¹⁶ Dhanapala, J., & Rauf, T. (2019). Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons: Review conferences and the future of the NPT. Stockholm International Peace Research Institute. <https://www.sipri.org/sites/default/files/2019-10/reflections-on-treaty-on-non-proliferation-of-nuclear-weapons.pdf>

Korea, France, United Kingdom, Democratic People's Republic of Korea who possess nuclear weapons. Russia and the US possess 88 percent of the world's nuclear arsenal in which 84 percent is available for military use for these countries.¹⁷ According to the Federation of American Scientists, it is believed that China, India, Pakistan and the DPRK are increasing the number of nuclear weapons in their arsenal.

The existence of these weapons poses significant risks to global security, and understanding the frameworks designed to prevent their spread and promote disarmament is crucial. Nuclear non-proliferation research is crucial and it is very important to understand the strengths and weaknesses or loopholes of the instrument which govern the provision of nuclear disarmament and non-proliferation. The realm of disarmament includes multiple challenges that need to be addressed and have multiple supporters and critics which will be reviewed in this paper. Although there are multiple challenges that need to be dealt with, this paper will be focused on the three pressing challenges which include NATO nuclear sharing, slow progress of the nuclear weapon states to pursue disarmament and the possibility of the members to withdraw from these instruments.

The study of nuclear non-proliferation, disarmament and the legal norms and instruments related to these provisions is highly important in a situation where multiple states still hold nuclear weapons. Multiple instruments have been drafted to reduce the number of nuclear weapons in the world and nuclear disarmament has highly received support from the international community and multiple instruments have been drafted to pursue disarmament and eventually set up norms to move towards a nuclear weapon free world.

Firstly this paper will be focusing on the provision of nuclear sharing, which has been an important topic in both the TPNW and the NPT. Four very important critics have been discussed in the context of the NPT. To begin with, the security concerns which have been created under this system by storing the American nuclear weapons in the Incirlik air base in Turkey. Critics have argued that although the nuclear weapons are generally sound due to the American safeguards, the situation in Turkey has worsened over time after the military coup in Turkey and scholars have highly supported the removal of these

¹⁷ Kristensen, H., Korda, M., Johns, E., Knight, M., & Kohn, K. (2024, March 29). *Status of World Nuclear Forces*. Federation of American Scientists. <https://fas.org/initiative/status-world-nuclear-forces/>

weapons from this airbase due to its close proximity with the Syrian border.¹⁸ Second critique which has been discussed are regarding the control of the nuclear weapons during war time as it has been speculated that the NATO pilots could be working jointly with the US in case of a war which gives the NATO members unfair advantage over other states.¹⁹ The third critique discussed in this section includes the extension of the nuclear sharing system in the current geopolitical climate with countries such as Poland willing to join the system. The mandate regarding nuclear sharing in both these treaties has been reviewed as the concept of nuclear sharing directly opposes the framework of both the treaties and raises significant concerns which need to be addressed.

The next critical issue explored in this paper is the lack of efforts to pursue disarmament by the nuclear weapon states as many nuclear armed states have retained their nuclear weapons and not fulfilled their obligations under the NPT. The NPT has not mentioned a proper time frame in its text, which combined with other loopholes has been a major cause for states to not fulfil their obligations under the treaty. This lack of progress has made the non-nuclear weapon states frustrated and has been one of the main reasons for the formation of the TPNW itself. It is very important to discuss this provision because disarmament literally affects the global nuclear regime by reducing the number of nuclear stockpiles and this chapter has discussed the importance of future nuclear control and governance such as the role of international law to move towards a nuclear weapon free world.

The final main clause of importance that has been discussed in this paper is the ability of the states to withdraw their membership from the NPT. The possibility of the states withdrawing their membership from the treaty especially became a serious concern when the DPRK became the first country to withdraw their membership from the NPT after which this provision was analysed and criticised by many other scholars. This provision has been governed in the Article 10 of the NPT and has been subjected to critics such as creating a loophole that allows the states to decide under what circumstances they will

¹⁸ Pifer, S. (2019, November 5). *It's time to get US nukes out of Turkey*. Brookings. <https://www.brookings.edu/articles/its-time-to-get-us-nukes-out-of-turkey/>

¹⁹ Butcher, M., Butler, N., Meier, O., Nassauer, O., Plesch, D., Schöfbänker, G., & Young, S. (1997, June). *NATO nuclear sharing and the NPT - Questions to be answered*. BASIC-BITS-CESD-ASPR Research Note 97.3. Berlin Information Center for Transatlantic Society (BITS). Retrieved from <https://www.bits.de/public/researchnote/rn97-3.htm>

withdraw the treaty and only allows a short period of three months before the states have to submit a notice to the security council to actually withdraw from the treaty. This paper has analysed how this provision has created a loophole where the states can easily sign and ratify the NPT, receive help to develop their nuclear program as one of the main goals of the NPT is to promote the peaceful usage of nuclear energy and then potentially withdraw from the treaty. DPRK's withdrawal proved to be catastrophic as they continued their nuclear weapon program after withdrawing from the NPT. It is also very important to discuss this clause in the TPNW as it has extended the time limit for the UNSC notice from three to twelve months but still permits the withdrawal along with prohibiting countries from leaving the treaty if they are an active party to a conflict. It has been argued that the states should not be allowed to withdraw from either treaties to pursue total nuclear disarmament but parallelly also that this would also make the hurdle higher for states such as NATO members to sign and ratify this treaty.

Therefore, a deep analysis and examination of nuclear sharing, disarmament and withdrawal would be the core important topics in this research as they highlight multiple complex frameworks, challenge the existing legal framework and portray a need for amendments and changes in the existing legal frameworks in order to progress towards a world free of nuclear weapons.

Research Objectives and Research Questions

This research seeks to analyse the interplay between the NPT and the TPNW which is very important to understand the challenges and further actions need to be pursued to achieve a world free of nuclear weapons. The main objective of this research is to examine the role of both of these treaties in the realm of nuclear weapons, by comparing their key provisions and examining their loopholes. The second main objective, aims to analyse the role of customary international relations in the broader disarmament framework by interplaying with the NPT and TPNW. Lastly, this thesis also aims to investigate the compatibility of the NPT and TPNW and their potential to co-exist and eventually cooperate towards the end goal of achieving nuclear disarmament.

The main research questions this thesis aim to answer are as follows:

- How do the main provisions of nuclear sharing, disarmament and withdrawal compare in the NPT and TPNW?
- How do the enforcement mechanisms of these treaties compare?
- What are the major challenges faced by these treaties in the terms of non-proliferation?
- How the NPT and TPNW have influenced the global disarmament norms?

- How can the interplay of these treaties would be necessary to achieve a nuclear weapon free world?

This thesis aims to answer all these questions in this research.

Methodology

The research methodology in this thesis is to analyse the critics and supporters of different provisions of the NPT and the TPNW and eventually examine their compatibility within the broader range of disarmament. The research design of this paper involved multiple layers of research, the main one being a comparative analysis between the NPT and the TPNW but also data analysis, literature review, legal analysis and an interview with Dr. Nadja Schmidt, the Executive Director of ICAN Austria to gain better first hand insights. In addition, quantitative data such as statistical information on the number of nuclear weapons, disarmament progress were mainly taken from highly reputable institutions like the Stockholm International Peace Research Institute (SIPRI) and the United Nations Office for Disarmament Affairs (UNODA). This data contextualised the effectiveness of these treaties and international efforts over time.

This paper will take on a comparative analysis approach by comparing the two main treaties in the realm of nuclear disarmament, i.e TPNW and NPT. This approach would involve systematically comparing and identifying the similarities and differences and gaining deeper understanding of the treaties. A comparative analysis approach involves systematically comparing two or more items to identify their similarities and differences, thereby gaining deeper insights and understanding. This methodology is widely used in various fields, including law, social sciences, and policy analysis. In comparative analysis, the researcher begins by selecting comparable subjects and defining the criteria for comparison. The analysis then proceeds by examining each subject in light of these criteria, highlighting points of convergence and divergence. Research in social sciences is extremely comprehensive and comparative.²⁰ Lieberman, 1985 signified, “Why compare?” is almost as philosophical as the question “Why do research?” and thus beyond the limits of this methodological discussion. Studies have their specific goals and agenda and comparing some items with others can help the researcher identify the aspect which

²⁰ Lieberman, S. (1985) Making it count: The improvement of social research and theory. Berkeley: University of California Press.

otherwise would be missed.²¹ This comparative analysis approach would be employed in this paper as one of the main methodologies to conduct this research. Applying a comparative analysis approach in the case of the NPT and the TPNW would allow to have a very comprehensive understanding of both of these instruments along with their roles, limitations, loopholes and strengths. The NPT, established in 1968, is primarily focused on preventing the spread of nuclear weapons and promoting the peaceful use of nuclear energy, with a long-term goal of nuclear disarmament. In contrast, the TPNW, adopted in 2017, takes a more direct stance by outright banning the possession, development, and use of nuclear weapons, emphasising the humanitarian and environmental imperatives for their abolition.

Subsequently, in-depth literature included academic articles, books, policy papers, and think tanks. This was an extremely important step in order to understand these both treaties from the various perspectives and played a major role to identify gaps and analyse existing research. It was a key step to understand the various challenges in moving towards total disarmament.

Next, a comprehensive interview was conducted with Dr Nadja Schmidt from the International Campaign to Abolish Nuclear Weapons which provided crucial insights into the development, future goals and challenges faced by the TPNW as a new treaty. Since TPNW is a new treaty and only based on the humanitarian security approach and denies the idea of traditional security deterrence, one of the main focus of this interview was to deepen understanding about this phenomena and understand the future aspirations of ICAN as an important organisation to advocate the ban of nuclear weapons.²² The information gained from this interview was also very important to also pursue comparative analysis.

All the data gained through different means were critically analysed both legally and theoretically to address and answer the research questions and concluded with a number of arguments regarding the NPT and TPNW and how the interplay of these treaties is important to completely eliminate nuclear weapons.

²¹ Miri, S. M. (2019, May 13). *A short introduction to comparative research*. Paper presented at Allameh Tabataba'i University, Faculty of Management & Accounting, Department of Business Management, Tehran, Iran.

²² See the specific questions in the appendix.

History and Development of the NPT

The Treaty on the non-proliferation is often referred to as the cornerstone of the nuclear weapons and is one of the most important treaties in the area of non-proliferation and disarmament.²³ The foundation of the NPT mainly relies on three pillars of non-nonproliferation, disarmament, and peaceful uses of nuclear energy.²⁴ The NPT aims to achieve nuclear disarmament and the total elimination of nuclear weapons and recalls previous treaties such as the Partial Test Ban Treaty (PTBT) which was adopted for the purpose of banning nuclear weapons in various environments.²⁵ Moreover, the NPT also obliges its parties to enter into a safeguards agreement with the International Atomic Energy Agency (IAEA) as a confidence building measure by letting IAEA conduct inspections in the country.²⁶ The NPT was open for signature in 1968 and entered into force in 1970 and today, a total of 191 have joined this treaty. The NPT recognises five countries as nuclear weapon states, which are France, People's Republic of China, United Kingdom, the Russian Federation and the United States of America.²⁷ Four states on the other hand which are not a part of the NPT include India, Israel and Pakistan, whereas the Democratic People's Republic of Korea became the first and the only state in the treaty's history to withdraw their membership from the NPT.²⁸

Since this paper aims to analyse the core provisions of the NPT, it is imperative to understand the negotiation and the development process of the NPT which highly reflects the power balance on the basis of what this treaty came into being and was eventually subjected to support and criticism from multiple scholars and experts, which will be explored in the next chapters of this thesis. The NPT was negotiated at a time where five

²³ Abe, N. (2020). The NPT at fifty: Successes and failures. *Journal for Peace and Nuclear Disarmament*. <https://doi.org/10.1080/25751654.2020.1824500>

²⁴ Kirsten, I., & Zarka, M. (2022). *Balancing the three pillars of the NPT: How can promoting peaceful uses help?* EU Non-Proliferation and Disarmament Consortium. Retrieved from https://www.nonproliferation.eu/wp-content/uploads/2022/05/EUNPDC_no-79.pdf40

²⁵ Abe, 2020.

²⁶ United Nations Office for Disarmament affairs. *Treaty on the Non-proliferation of Nuclear Weapons (NPT)*. Retrieved from <https://www.un.org/disarmament/wmd/nuclear/npt/>

²⁷ UNODA, Retrieved from <https://www.un.org/disarmament/wmd/nuclear/npt/>

²⁸ Federal Ministry Republic of Austria European and International Affairs. (n.d.). *Prohibition of nuclear weapons*. Retrieved from [https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons/prohibition-of-nuclear-weapons#:~:text=Treaty%20on%20the%20Prohibition%20of%20Nuclear%20Weapons%20\(TPNW\)&text=These%20negotiations%20successfully%20concluded%20on,favour%20of%20the%20new%20treaty](https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons/prohibition-of-nuclear-weapons#:~:text=Treaty%20on%20the%20Prohibition%20of%20Nuclear%20Weapons%20(TPNW)&text=These%20negotiations%20successfully%20concluded%20on,favour%20of%20the%20new%20treaty)

of the NWS (Nuclear Weapon states) already had a very mature nuclear arsenal as they conducted multiple nuclear tests and took multiple initiatives to achieve this goal. Therefore it has been highly deemed by multiple state parties as an issue of fairness as the classification of the nuclear weapon states and non-nuclear weapon states in a treaty that was supposed to be a transformative regime rather became a status quo regime, which signifies a regime for managing nuclear weapons in the interests of the NWS.²⁹ NPT therefore has been deemed as discriminatory by many and important figures in the field of disarmament, such as the Under Secretary General for Disarmament, Jayantha Dhanapala who stated that “There could be little hope for nonproliferation in a world structured by the rules of nuclear apartheid.”³⁰ This sentiment has reflected deep frustration among the NNWS since the inception of the NPT and critics have signified that this unequal distribution of power has perpetuated a circle where the NWS are not incentivised to disarm whereas the NNWS have to strictly follow their obligations under the NPT.³¹ More detailed provisions of this argument will be reflected in the next chapters of this paper as the mandate to share nuclear weapons (Article 1 and 2), the obligation to eliminate the nuclear weapons (Article 6) and withdrawal from the treaty (Article 10) have been analysed.

Nevertheless, the NPT might have been labelled discriminatory but still it is usually recognised as the cornerstone of non-proliferation and disarmament as it has been the first treaty of its scale which has been this successful at reducing the nuclear arsenal and has acted as the baseline for many treaties in the area including the NWFZ treaties, bilateral treaties and certainly the TPNW.

²⁹ Tannenwald, N. (2013). *Justice and fairness in the nuclear nonproliferation regime*. Roundtable: Nonproliferation in the 21st century. Watson Institute for International and Public Affairs, Brown University. <https://watson.brown.edu/files/watson/imce/people/faculty/tannenwald/Tannenwald%20-%20Justice%20and%20Fairness%20in%20the%20NPT%202013.pdf>

³⁰ Dhanapala, J., & Rydell, R. (2005). *Multilateral diplomacy and the NPT: An insider's account*. Geneva, Switzerland: United Nations Institute for Disarmament Research. As cited in Tannenwald, N. (2013). *Justice and fairness in the nuclear nonproliferation regime*. Roundtable: Nonproliferation in the 21st century. Watson Institute for International and Public Affairs, Brown University. <https://watson.brown.edu/files/watson/imce/people/faculty/tannenwald/Tannenwald%20-%20Justice%20and%20Fairness%20in%20the%20NPT%202013.pdf>

³¹ Pretorius, J., & Sauer, T. (2021). Ditch the NPT. *Survival*, 63(4), 103-124. <https://doi.org/10.1080/00396338.2021.19561974>

History and Development of TPNW

The Treaty on the Prohibition of Nuclear Weapons (TPNW) is one of the most prominent and important treaties in the domain of nuclear disarmament and non-proliferation. The main provisions of the TPNW, along with the NPT will be analysed in this paper in the next chapters. However, it is very important to understand the historical context, development and negotiation process of the TPNW as they are crucial elements which reflect the core foundations of the treaty. This section will briefly look into the historical developments that led to the creation of the TPNW. One of the foundational elements of the TPNW is the “Humanitarian Initiative” mainly from 2010 to 2014. In 2010, the former president of the ICRC (International Committee of the Red Cross) called ICRC the first international humanitarian organisation present in the immediate aftermath of the 1945 nuclear bombings in Japan. He also signified that the inability to deal with the humanitarian consequences caused by the nuclear weapons as it would ensure destruction on many levels.³² This mention of the humanitarian consequences of the nuclear weapons was an important element in the 2010 NPT review conference too and the conference expressed deep concerns regarding the humanitarian consequences of the nuclear weapons. This was a very important development as it was the first time after 1968 that the humanitarian consequences of the nuclear weapons were mentioned in any NPT review conference.

The next imperative step which led to the formation of the TPNW were the meetings held in Oslo, Norway regarding the catastrophic humanitarian consequences of the usage of nuclear weapons held in March 2013. Important advocates for nuclear disarmament and non-proliferation, such as ICAN hosted a civil society forum to explain the humanitarian impact of nuclear weapons, followed a series of meetings hosted by Norway from 4-5 March which saw the participation of over 127 states, multiple UN agencies and international organisations along with civil society.³³ In another set of very important meetings held in Vienna, the question of legal and political conclusions regarding the humanitarian initiatives was raised, and the civil society, most notably ICAN, demanded

³² Kmentt, A. (2015). The development of the international initiative on the humanitarian impact of nuclear weapons and its effect on the nuclear weapons debate. *International Review of the Red Cross*, 97(899), 681–709. <https://doi.org/10.1017/S1816383116000059>

³³ Reaching Critical Will. (2013). *Conference on the humanitarian impact of nuclear weapons, Oslo 2013*. Retrieved from <https://www.reachingcriticalwill.org/disarmament-fora/hinw/oslo-2013>

diplomatic actions to completely ban nuclear weapons.³⁴ These Vienna conferences also highlighted the international law aspects by implying the WHO International Health Regulations and the Principles of the International Humanitarian Law and the human security addressed in the existing legal framework, along with the moral principles in the usage of nuclear weapons.³⁵ Important players in the civil society such as ICAN certainly played a very important role in the creation and adoption of the TPNW and the conclusions from these meetings led to some formal negotiations and with the consensus from over 113 countries and 13 oppositions along with 35 abstentions, the UNGA resolution 71/2016 was adopted to negotiate a legally binding tool to ban nuclear weapons.³⁶ Finally, negotiations took place in the United Nations headquarters situated in New York, and finally concluded on 7th July and the TPNW was adopted and 122 States voted in the favour of the TPNW.³⁷ The TPNW came into force on 22nd January, 2021 and completely prohibits development, production, possession, sharing and use of nuclear weapons³⁸ and aims to fill some legal gaps in the disarmament framework.

Currently in 2024, the TPNW has 70 state parties and 27 signatories which have not yet ratified the treaty, which signifies the fact that 49.2 percent of the states have accepted the norm for the prohibition of nuclear weapons. The phenomena which makes the TPNW very different from the NPT is the constant involvement of multiple actors such as civil society, the UNGA and other players as opposed to the NPT where the main interests of major NWS were reflected in the negotiations.³⁹ It represents the culmination of multiple years of international cooperation, diplomacy, and negotiations of the NNWS to negotiate a framework that would comprehensively prohibit nuclear weapons and address the issue of humanitarian security associated with the usage of nuclear weapons.

³⁴ Kmentt A., 2015

³⁵ Kmentt A., 2015

³⁶ United Nations. (2017). *Resolution adopted by the General Assembly on 23 December 2016: A/RES/71/258*. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/258

³⁷ Federal Ministry Republic of Austria European and International Affairs. (n.d.). *Prohibition of nuclear weapons*. Retrieved from [https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons/prohibition-of-nuclear-weapons#:~:text=Treaty%20on%20the%20Prohibition%20of%20Nuclear%20Weapons%20\(TPNW\)&text=These%20negotiations%20successfully%20concluded%20on,favour%20of%20the%20new%20treaty](https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons/prohibition-of-nuclear-weapons#:~:text=Treaty%20on%20the%20Prohibition%20of%20Nuclear%20Weapons%20(TPNW)&text=These%20negotiations%20successfully%20concluded%20on,favour%20of%20the%20new%20treaty)

³⁸ United Nations. (2017). *Treaty on the Prohibition of Nuclear Weapons*. Retrieved from <https://treaties.unoda.org/t/tpnw>

³⁹ International Campaign to Abolish Nuclear Weapons. Schmidt, Nadja. Personal Communication. 14th August, 2024.

Chapter 2- International Efforts and Support for Disarmament

There have been multiple efforts for pursuing nuclear disarmament and nonproliferation. After the attacks in Hiroshima and Nagasaki and the nuclear arms race between the US and USSR, the international community realised the need to pursue disarmament and therefore, there have been a number of efforts to pursue this goal. There have been a number of national efforts, regional efforts which included the establishment of nuclear weapon free zones in many regions of the world. These attempts also extend to creation of multiple treaties like the NPT and TPNW but also Comprehensive Test Ban Treaty (CTBT), Biological Weapons Convention and so on. Furthermore, the International Court of Justice has also issued an advisory opinion in 1996 called “Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons”. This section will explore and analyse three of these international initiatives, i.e the 1996 International Court of Justice Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons, development of customary international law against the nuclear weapons and the creation of the Nuclear Weapon Free zones in multiple regions of the world.

International Court of Justice Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons

The International Court of Justice issued the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons in 1996. It was a request by the World Health Organization (WHO) to the ICJ under the Article 76 of the WHO constitution, which states⁴⁰ *“Upon authorization by the General Assembly of the United Nations or upon authorization in accordance with any agreement between the Organization and the United Nations, the Organization may request the International Court of Justice for an advisory opinion on any legal question arising within the competence of the Organization”*.⁴¹ The specific question WHO posed to the ICJ was “Is the threat or use of nuclear weapons in any circumstance

⁴⁰ Jöbstl, H. (2015). *Nuclear disarmament and international law: Legal challenges towards the complete prohibition and comprehensive disarmament of nuclear weapons* (Master's thesis). Karl-Franzens-Universität Graz, Austria.

⁴¹ World Health Organization. (1946). *Constitution of the World Health Organization*. In *Basic documents* (pp. 1-18). Geneva: World Health Organization.

permitted under international law?"⁴² This request uprooted from the increasing global concerns and their legality under the frameworks such as the IHL (International Humanitarian Law) to apply the charter law "the use of force and the law applicable in armed conflict, in particular humanitarian law,"⁴³. The 1996 Advisory Opinion by the ICJ is a very important legal statement in the realm of nuclear weapons because in this statement they concluded that there was no specific authorisation on any comprehensive universal prohibition. They examined the provisions significant to the use of force, specifically Article 2 (4) and Article 51 of the Charter of the United Nations. The ICJ in their advisory opinion also mentioned the "Principle of Distinction". This principle also is mentioned in the first protocol of the Geneva Convention and signifies that the parties to a conflict must differentiate between the civilians and combatants and between civilian objects and military objectives."⁴⁴ Nuclear Weapons have massively destructive abilities and fail to distinguish the civilian and military targets. The International Court of Justice in the Article 78 of their advisory opinion to protect the civilian population and cause unnecessary suffering to the combatants the court also ruled that the states should not have freedom to choose the weapons of their choice and respect the Principle of Distinction.⁴⁵ The 1996 advisory opinion by the ICJ played a very important role in recognising the moral use of nuclear weapons and most importantly recognising that there is no legal instrument which completely prohibits the use of nuclear weapons. Moreover, by recognizing the important principles of human security such as "Principle of Distinction" it can be said that this principle recognised by the ICJ helped to reinforce the issue of human security and nuclear weapons and served as a foundational framework of the TPNW which came into force in 2021, reflecting the argument that the human security should be the main centre of discussion rather than the traditional security approach.

Customary International Law

⁴² Jöbstl, 2015

⁴³ International Court of Justice. (1996, July 8). *Legality of the threat or use of nuclear weapons* (Advisory Opinion). General List No. 95.

⁴⁴ International Committee of the Red Cross. (1977, June 8). *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)*. Retrieved from <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>

⁴⁵ Legality of the threat or use of nuclear weapons: Overview of the case. Retrieved June 24, 2024, from <https://www.icj-cij.org/case/95>

International Court of Justice has recognised Customary International Law as a legitimate source of International Law under the Article 38 of their statute which states “The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply international custom, as evidence of a general practice accepted as law”⁴⁶

In order to delve into the obligation to pursue disarmament as a customary International Law, it is important to understand the definition of international law itself and what exactly constitutes customary international law. The International Court of Justice in their North Sea Continental Shelf Case observed two building blocks of customary international law. They ruled that there are two aspects of customary international law and it is axiomatic that the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States’.⁴⁷ State practice in this case consists of extensive and virtually uniform behaviour regarding the specific provision being questioned, indicating a consistent and general practice among the states. The ICJ emphasised that state practice must be “both extensive and virtually uniform.”⁴⁸ The second aspect of the customary international law mentioned by the international court of justice was “*Opinio Juris*”. The court emphasised that in addition to the practice being widespread, the states have to also engage in a belief that they are legally compelled to do something. The ICJ in paragraph 44 of the North Sea Continental Shelf case stated *“It is therefore not enough that the acts in question should be consistent with what might be a rule of customary international law: or even that the States concerned should behave in a certain way because they believe that to be required by international law. They must, in addition, feel that they are conforming to what amounts to a legal obligation.”*⁴⁹ These two principles of customary international law can be analysed in the case of disarmament and it can be concluded that although the current disarmament framework would satisfy both of these requirements, there was still no comprehensive instrument to completely prohibit the nuclear weapons as they could act with their own discretion. Although there is a common state practice and *opinio juris* which satisfies the criteria for the customary international law

⁴⁶ Statute of the International Court of Justice. (1945). Retrieved from https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf

⁴⁷ Talmon, S. (2015). *Determining Customary International Law: The ICJ's Methodology*.

⁴⁸ North Sea Continental Shelf, Judgment, I.C.J. Reports 1969 (para. 77)

⁴⁹ North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 44, para. 77

in the case of nuclear disarmament. There is still not a fully legally binding tool which prohibits the nuclear weapons, as the states can act the way they want as long as they do not contravene an explicit prohibition. This situation aligns with the “Lotus Principle” which was firstly coded by the Permanent Court of International Justice in the France vs Turkey (S.S Lotus Case). In this case, the PCIJ established that the states are sovereign and can exercise their jurisdiction as long as it is not restricted by international law or any other explicit prohibition. The Lotus Principle is based on the “Negative Permission”, which signifies what is not prohibited by the international law is actually permitted.⁵⁰ This principle was also applied by the International Court of Justice in the 1996 advisory opinion on The Legality Of Threat Or Use Of Nuclear Weapons, applied the Lotus principle and assessed the legality of nuclear weapons under customary international law. The ICJ signified, “There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such” and *“threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful”*⁵¹ This implies that the states are not completely prohibited to use nuclear weapons unless completely prohibited under international law. This recognition by the ICJ has since then witnessed a major change since the adoption of the TPNW since 2021 as it aims to prohibit the use of nuclear weapons.⁵² and has addressed the legal gaps recognised by the ICJ. Moreover, the existence of the TPNW itself can still produce normative effects and contribute to the state practice and opinio juris, as signified by the ICJ in the North Sea continental shelf case that that *‘widespread and representative participation in a treaty can be considered evidence of the formation of the customary international law’*.⁵³

Nuclear Weapon Free Zones

⁵⁰ Handeyside, H. (2007). The Lotus Principle in the ICJ Jurisprudence: Was the ship ever afloat. University of Michigan Law School. United States of America. Retrieved from <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1145&context=mjil>

⁵¹ ICJ, 1996

⁵² TPNW, 2017

⁵³ Spagnolo, A. (2022). International legal obligations related to nuclear disarmament and nuclear testing. In *International law and chemical, biological, radio-nuclear (CBRN) events* (pp. 417–438). Brill. https://doi.org/10.1163/9789004507999_025

After twelve years of the nuclear attacks on the cities of Hiroshima and Nagasaki in Japan, the initial plans for the development and strategy of the NWFZ occurred in 1957. The US and the USSR were both involved in the nuclear arms race and there were not enough efforts to pursue disarmament which resulted in the dissatisfaction of other states. There was no guarantee that history would not repeat itself and these states would be the next Hiroshima and Nagasaki. This resulted in the multiple initiatives by the non-nuclear weapon states to take some actions in ensuring that their area is free of nuclear weapons. It all started in the end of 1957 when the foreign minister of Poland, Mr Adam Rapacki proposed a Central European Nuclear weapon free zone including Czechoslovakia, both German republics and Poland. This proposal was eventually rejected mainly by the Nuclear Weapon states of US and UK as they considered it appropriate to balance the number of nuclear weapons and deploy them in Central Europe.⁵⁴ Although this plan was rejected, it served as a baseline for many other regions of the world, including Latin America where five states of Bolivia, Brazil, Chile, Ecuador and Mexico proposed a multilateral agreement for the denuclearisation of Latin America. It eventually led to the creation of the Treaty of Tlatelolco which was signed and ratified by twenty one Latin American states in 1967 and it led to the establishment of the first nuclear weapon free zone.⁵⁵ This treaty has also been crucial as it also provides a definition of the nuclear weapons itself which states, *“a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof”*⁵⁶

More areas such as South Pacific, South East Asia and Central Asia also established nuclear weapon free zones in their respective areas. The development of the NWFZ represents an important contribution and a dedication to denuclearisation. The

⁵⁴ Vignard, K. (2011). *Nuclear weapon free zones*. United Nations Institute for Disarmament Research. Retrieved from <https://unidir.org/files/publication/pdfs/nuclear-weapon-free-zones-en-314.pdf>

⁵⁵ Nuclear Energy, Nonproliferation, and Disarmament. (2010). *Nuclear-weapon-free zones*. Retrieved from https://www.ipinst.org/wp-content/uploads/2010/04/pdfs_freezoneschapt2.pdf

⁵⁶ United Nations. (1967). *Treaty for the Prohibition of Nuclear Weapons in Latin America (Tlatelolco Treaty)* (United Nations document A/6663). United Nations. <https://treaties.un.org/doc/publication/unts/volume%20634/volume-634-i-9068-english.pdf>

NWFZ also represents important contributions to the NPT itself as the Article 7 of the treaty states that *“Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.”*⁵⁷

The establishment of the NWFZ can also be viewed through the lens of customary international law which comprises State Practice and *Opinio Juris*. It can be said that since have committed themselves to disarm through treaties and demonstrated a very clear support through multiple treaties such as the aforementioned Treaty of Tlatelolco, also the Treaty of Rarotonga, Treaty of Bangkok, and Treaty of Pelibanda which resulted in the establishment of the NWFZ in South Pacific, Southeast Asia and Africa respectively. Even the continent of Antarctica has a permanent NWFZ. These regions have contributed to the state practice by a broader norm against the presence of nuclear weapons in general. In the terms of *opinio juris*, there is also a common belief and practice by the states, often witnessed in the declarations made by the parties to the treaties committed to disarmament and denuclearisation. For example, taking a look at the preamble of the Treaty of Tlatelolco, the preamble states *“Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards strengthening a world at peace, based on the sovereign equality of States, mutual respect and good neighbourliness,”*⁵⁸ signifying a norm to pursue disarmament. Even multiple UNGA resolutions have repeatedly witnessed support from the majority of states and forming a strong *opinio juris* around the NWFZ. There have also been more proposals to establish a NWFZ in other areas of the world, most noticeably the middle east with the resolution 53/74 of the UNGA titled as *“Establishment of a nuclear-weapon-free zone in the region of the Middle East”*⁵⁹

To conclude, it can be said that the establishment of the NWZF has been very important in prohibiting the states of some regions from acquiring nuclear weapons and

⁵⁷ NPT, 1968

⁵⁸ Multilateral Treaty for the Prohibition of Nuclear Weapons in Latin America, with annexed Additional Protocols I and II. (1967, February 14). Retrieved from <https://treaties.un.org/doc/Publication/UNTS/Volume%20634/volume-634-I-9068-English.pdf>

⁵⁹ United Nations. (1998). *Resolution adopted by the General Assembly on the report of the First Committee (A/53/580): Establishment of a nuclear-weapon-free zone in the region of the Middle East (A/RES/53/74)*. Retrieved from <https://www.un.org/unispal/document/auto-insert-185449/>

also strengthening the regional security and stability as the presence of nuclear weapons in a region would certainly heighten the likelihood of a regional conflict and confrontation. They have also strengthened the norm against their possession and usage of the Nuclear Weapons by widely contributing to the disarmament norm and setting an example for the other regions of the world to follow this model.

Chapter 3

Comparative Legal Analysis of the Nuclear Sharing Provision in the NPT and the TPNW

Nuclear Sharing: A brief overview

Nuclear sharing is one of the most important aspects in the domain of nuclear weapons. Basically, it can be described as a system where countries who do not possess nuclear weapons get involved into the process of transferring, storing and potentially using the nuclear weapons possessed by another country. This system can allow the states to participate in the control and deployment of the nuclear weapons although they usually do not possess their own nuclear arsenal. Nuclear Sharing is a result of a broad deterrence strategy which aims to assure that the allies can strengthen their security alliance without actually having a stake in building the nuclear program themselves. Since these weapons are transferred and stored in the territories of the host but are owned by another country, they are usually maintained by the nuclear weapon state. This chapter of this thesis will explore the sphere of nuclear sharing as it is one of the most debatable practices in this area especially in regards to the nuclear sharing arrangements carried out by the NATO.

NATO's nuclear sharing program is the most popular program in the realm of nuclear weapons where American nuclear weapons are stored in multiple countries such as Belgium, Germany, Italy, Netherlands and Turkey. Previously Greece also hosted US nuclear weapons but they were withdrawn in 2003 and furthermore, the United Kingdom also hosts US nuclear weapons, US air force aircrafts and pilots.⁶⁰

The US has stored B61 bombs in these countries, under this program but also the collective self defence program as signified in the Article 5 of the NATO charter which states that *"The Parties agree that an armed attack against one or more of them in Europe*

⁶⁰ BASIC & ORG. (2005, April). *NATO: Nuclear sharing or proliferation? The Non-Proliferation Treaty Review Conference: Breakthrough or bust in '05?* (Briefing 8). British American Security Information Council & Oxford Research Group.
<https://www.files.ethz.ch/isn/90409/05-04%20NATO%20Nuclear%20Sharing%20or%20Proliferation.pdf>

or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.” NATO’s nuclear sharing program is one of the major programs in this domain and nuclear sharing and has been discussed by many scholars and experts in the area. Both of these provisions are mentioned in both the NPT and TPNW. This section will explore the provision of nuclear sharing in both of these treaties but firstly, it is very important to understand the historical background of nuclear sharing and how this arrangement came into being.

In the 1950’s even before the NPT came into being, NATO’s collective self defence has been an integral part of the organisation. It took a lot of negotiations and military efforts to make this arrangement successful. One of the key bodies of NATO, the Nuclear Planning Group was established in 1966 and they were responsible for coordinating, maintaining NATO’s nuclear weapons. The first NPG meeting was held in 1967 at Washington D.C which was attended by many NATO defence ministers.⁶¹ This group was a platform for NATO members to have guaranteed security without actually acquiring nuclear weapons by themselves. The roots of successful negotiations included multiple meetings in September 1966 in New York between the US and Soviet negotiators where they had the main goal to strengthen bilateral relations and prevent non-proliferation.⁶² There were favourable conditions for NATO that time but the USSR accepted this system under a condition of assurances that West Germany would not gain the control over nuclear weapons as it was the major concern to the Warsaw Pact. This compromise turned out to be one of the most important negotiations in NPT’s success.

Nuclear Sharing still remains an important topic to be discussed in the domain of nuclear weapons even in 2024. According to the International Campaign to Abolish

⁶¹ NATO. (2020, March). *Nuclear Planning Group: The first meeting of the NPG, 6-7 April 1967, Washington, D.C.* NATO. https://www.nato.int/nato_static_fl2014/assets/pdf/2020/3/pdf/200305-50Years_NPG.pdf

⁶² Alberque, W. (2017). The NPT and origins of NATO’S nuclear sharing arrangements.

Proliferation papers No. 57. Ifri. France. Retrieved from https://www.ifri.org/sites/default/files/atoms/files/alberque_npt_origins_nato_nuclear_2017.pdf

Nuclear Weapons (ICAN), six European countries which have not signed and ratified the TPNW but have signed and ratified the NPT host NATO nuclear weapons.⁶³ This section will explore the realm of nuclear sharing in both NPT and TPNW.

Nuclear Sharing in the NPT

Firstly, beginning with the NPT, the Article 1 of the NPT states that *Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices*”,⁶⁴ whereas Article 2 of the text poses an opposite obligation on the states parties to not to receive them, the text states that *"Each non-nuclear weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices."*⁶⁵

Multiple scholars and state parties to the NPT have criticised the provision of nuclear sharing in the terms of Article 1 and 2 of the NPT. The United States has repeatedly claimed that “nuclear sharing does not violate the NPT provisions as it does not include transferring the nuclear weapons unless a decision has been made to go to a war,⁶⁶ which signifies that the US has openly claimed that NPT does not apply during war time. The military strategy of NATO still requires the NNWS NATO members to be prepared to receive nuclear weapons during the time of war and the weapons can be transferred to the allied pilots during the war time.⁶⁷ Recently in 2022 this issue has further escalated as new NATO members such as Sweden and Finland have joined the Nuclear

⁶³ International Campaign to Abolish Nuclear Weapons. (n.d.). *Nuclear arsenals*. https://www.icanw.org/nuclear_arsenals#:~:text=The%20Federation%20of%20American%20Scientists,deployed%20in%20five%20European%20countries

⁶⁴ NPT, 1968

⁶⁵ NPT, 1968

⁶⁶ Basic & Org, 2005

⁶⁷ Butcher, M., Butler, N., Meier, O., Nassauer, O., Plesch, D., Schöfbänker, G., & Young, S., 1997

Planning Group and perhaps to take part in NATO's annual nuclear strike exercise.⁶⁸ The Article 1 and 2 of the NPT have been subjected to interpretation during multiple instances and have been subjected to many criticisms which will be explored in this section.

One of the instances where the nuclear sharing has been criticised include the security concerns, especially concerning the storage of the nuclear weapons at Incirlik Air base in Turkey which hosts around 20 to 30 nuclear weapons. The US has always strongly supported Turkey's membership in NATO after its formation in 1949 considering its strategic location near the Middle East. NATO members were more concerned about the Soviet threat as compared to the middle east but Americans highly supported the Turkish membership and for many Turks NATO meant the US and vice versa.⁶⁹ During the 1960's and 1970's there was a high threat by the Soviet Union around the Mediterranean as the Soviets increased their military presence around the area. These soviet actions compelled Turkey to rely extensively on nuclear sources and the Turkish political and security elites viewed these weapons as a tool for deterrence and therefore these nuclear weapons were deployed in Turkey by mutual agreements with NATO ⁷⁰.

Today, Turkey does not allow the United States to permanently store their bombs permanently at Incirlik and the US is therefore obligated to ship the weapons to other locations before using them.⁷¹ Critics have repeatedly signified that the political stability has worsened over years for Turkey, especially in regards to the coup attempt in 2016, an instance where Turkey experienced a severe military coup to overthrow the government and remove President Tayyip Erdogan from power.⁷² This combined with the fact that the Incirlik air base is less than 200 km from the Syrian border significantly increases the risks that revolve around this arrangement. The proximity to the Syrian border, a country which is home to ISIS heightens the risk for the nuclear weapons to potentially end up to unauthorised parties. Jeffrey Lewis, who is the director of the East Asia Nonproliferation Program at the Middlebury Institute of International Studies has noticed that the American

⁶⁸ Kristensen, H. M., Korda, M., Johns, E., & Knight, M. (2023). Nuclear weapons sharing, 2023. *Bulletin of the Atomic Scientists*, 79(6), 393-406. <https://doi.org/10.1080/00963402.2023.2266944>

⁶⁹ Kibaroglu, M. (2005). Isn't it time to say farewell to nukes in Turkey? *European Security*, 14(4), 443-457. <https://doi.org/10.1080/09662830500528294>

⁷⁰ Kibaroglu, 2005

⁷¹ Kristensen, H. M., Korda, M., Johns, E., & Knight, M, 2023

⁷² AlJazeera. (2017). *Turkey's failed coup attempt: All you need to know*. Retrieved from <https://www.aljazeera.com/news/2016/12/turkey-failed-coup-attempt-1612170323455>

safeguards at this airbase are generally safe, they are still based on fragile assumptions about Turkey's stability and alliance with the US and the events such as the 2016 coup can challenge these assumptions. The disturbing image of the commander of Incirlik base being forcibly evicted casts doubt on the security of the base and broader U.S.-Turkey relations. This point can be further solidified upon the fact that the U.S department of defence during 2016 made a decision to evacuate military and civilian families from the region because there were terrorist attacks as two right wing nationalists attempted to attack a U.S airman near the weapons⁷³. Steven Pifer, who is a nonresident senior fellow in the Arms Control and Non-Proliferation Initiative at Strobe Talbott Center for Security, Strategy, and Technology, and the Center on the United States and Europe at the Brookings Institution, and also an affiliate of the Center for International Security and Cooperation (CISAC) at Stanford University has also signified that the American bombs in Turkey have become highly unfeasible in the current geopolitical situation. His analysis has demonstrated that changes in Turkey's alliances and worsening of the relationship with the US undermine the strategic rationale for storing these weapons in Turkey.⁷⁴

The other factor that makes the situation in Turkey different is that the operations in this air base are different as compared to other bases which store nuclear weapons under the sharing arrangement. Some NATO members operate dual-capable aircraft which allows them to deploy nuclear weapons upon authorization and the pilots are trained for this role.⁷⁵ However, this is very unique in Turkey's case because it lacks dual aircraft and if the US and NATO would have to transport them by air which requires close coordination between them and Turkey and it further shows the complexities and danger of this sharing system.

During the NPT negotiations and even today the NATO members argue that nuclear sharing is in compliance with the Article 1 and 2 of the NPT, as it was negotiated that NPT does not apply during war. This is a very controversial stance and questions the whole integrity of the NPT as NATO has the full right to unilaterally decide when they are bound by the treaty and when they are not, which undermines the core provisions of the NPT and

⁷³ Lewis, 2018

⁷⁴ Pifer, 2019

⁷⁵ Nassauer, O. (2001, April). *Nuclear sharing in NATO: Is it legal?* Science for Democratic Action. Berlin Information Center for Transatlantic Security. Retrieved from <https://www.bits.de/public/articles/sda-05-01.htm>

creates a loophole. Furthermore, critics have stated that this also introduces double standards as all the parties to the NPT as all the parties are required to follow the NPT provisions and adhere to the obligations but only the NATO members can enjoy flexibility at their discretion under certain circumstances.⁷⁶ Therefore, the ability to unilaterally decide when a war has come and then decide when they are not bound by the NPT is one of the important criticisms in regards to the Article 1 and 2 of the NPT.⁷⁷

Next criticism critics have pointed out in Article 1 and 2 of the NPT are the control of the nuclear weapons itself. Mexico questioned the nuclear sharing system in the 1995 NPT review conference that dealt with Article 1 and 2 of the treaty. Although they were highly aware that the US were in charge of managing the nuclear weapons to ensure adherence to the treaty's regulations on the transfer of nuclear weapons, they still raised questions to have a clearer idea about the system⁷⁸ Hayashi, 2021 has pointed out that although the U.S is incharge of the nuclear weapons on paper, there still could be circumstances where these weapons could come under the control of the host state and it raises some serious concern about compliance with the NPT. It is very realistic to imagine that in a circumstance such as war where the usage of the nuclear weapons has been approved by the US and the NATO host state, it would be carried out by joint forces instead of completely transferring the weapons to the US. This condition has also caused uncertainty between the NNWS and the nuclear weapon states as again, there could potentially be a situation where the NATO members are actually controlling the nuclear weapons.⁷⁹ New countries would be eligible to participate in the NATO nuclear sharing system especially under the current geopolitical climate which will raise more questions about the state parties compliance with the provisions of the NPT and will further weaken the goal to move towards total nuclear disarmament. For instance, Prime Minister of Poland Mr Mateusz Morawiecki also showed strong interest to host NATO nuclear weapons under the NATO nuclear sharing scheme. Poland's National Security Bureau

⁷⁶ Nassauer, 2001

⁷⁷ Butcher, M., Butler, N., Meier, O., Nassauer, O., Plesch, D., Schöfbänker, G., & Young, S, 1997

⁷⁸ Hayashi, M. (2021). NATO's nuclear sharing arrangements revisited in light of the NPT and the TPNW. *Journal of Conflict and Security Law*, 26(3), 471-491.

⁷⁹ Hayashi, 2021

head, Jacek Siewiera has also shown interest in deploying Poland's F-35A Lightning II aircraft which is said to be operational in 2024-2025 to deliver B61 nuclear bombs.⁸⁰

Poland aims to reinforce the extended deterrence policy of NATO and the deterrence value of these weapons would highly depend on their capability to target Belarus and Russia if the current situation in Ukraine becomes worse. Poland has a very strategic location for NATO as it is the only major country between Belarus and Russia and the other Western European blocs. It needs to be understood that Poland has signed and ratified the NPT and participating in the NATO nuclear sharing arrangement could potentially trigger Russia to store more weapons in Belarus or other allies. Although some critics might argue that this might create a situation of Mutually Assured Deterrence, considering Poland's worsening relations with Russia, combined with the fact that NATO has repeated that the NPT is no longer bound during war could potentially increase political tension and risk of the usage of nuclear weapons in Central and Eastern Europe.

Nuclear Sharing in the TPNW

Next, the issue of Nuclear sharing from the jurisdiction of the TPNW will be discussed. The specification of nuclear sharing are governed by Article 1 (b) and (c) of the treaty which states, *"Each State Party undertakes never under any circumstances to 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.* In addition, the states are also obliged under Article 1 (g) to not 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."*⁸¹ As compared to the NPT, this provision in the TPNW is almost invalid as the members involved in the NATO nuclear sharing process have not signed and ratified the TPNW, but it is still important to engage in the analysis of normative interpretations set up by the TPNW in order to understand the inherent dynamics of nuclear sharing and disarmament.

⁸⁰ Poland's bid to participate in NATO nuclear sharing. (2023). *Strategic Comments*, 29(7), iv-vi. Taylor & Francis Group. <https://doi.org/10.1080/13567888.2023.2258045>

⁸¹ TPNW, 2017

The nature of the TPNW is more rigorous as compared to the NPT. Whereas the Article 1 and 2 of the NPT oblige the states to not “transfer” and “control”, Hayashi, 2021 has pointed out that these terms are subject to debate and have a wider sense of meaning as compared to the usage of “stationing, installation or deployment” as mentioning in the TPNW and directly referring to physical acts.⁸² For instance, the word transfer has been given different meaning, in different treaties, such as in the Arms Trade Treaty (ATT) transfer is defined as ‘export, import, transit, trans-shipment and brokering. Due to this wide definition this list is usually seen as exhaustive.⁸³ Hayashi, 2021 further signified that no special meanings were given during the drafting of the TPNW unlike the NPT and it is clear that the terms stationing, installation or deployment do not occur under the nuclear sharing system without changing the definition of these terms itself. ⁸⁴ These terms are more specific and have been used interchangeably in a number of treaties before. In the treaty establishing the NWFZ in Latin America, treaty of Tlatelolco, the word “deployment” has been used and has been often associated with arms control treaties signed between the US and USSR. On the other hand, the term “deployment” has also been used in other NWFZ treaties such as the Treaty of Rarotonga, which was negotiated to establish the NWFZ in South Pacific and has been referred to a warhead situated in a launcher to be placed there.⁸⁵

NATO members have claimed that this provision does not take the changing world dynamics and security situations into consideration and is not compatible with the existing security environment of the world. As discussed in the previous section of this paper, although in the case of the NPT it has been argued that the NATO is compatible with the NPT as these arrangements are older than the treaty itself and might be subjected to debates, it is not same in the case of the TPNW as it completely prohibits stationing of the nuclear weapons in their countries. This can be interpreted in two ways, Dr Nadja Schmidt

⁸² Hayashi, 2021

⁸³ Borrie, J., Caughley, T., Hugo, T. G., Løvold, M., Nystuen, G., & Waszink, C. (2016). *A prohibition on nuclear weapons: A guide to the issues*. International Law and Policy Institute (ILPI) & United Nations Institute for Disarmament Research (UNIDIR).
<https://unidir.org/files/publication/pdfs/a-prohibition-on-nuclear-weapons-a-guide-to-the-issues-en-647.pdf>

⁸⁴ Hayashi, 2021

⁸⁵ Borrie, J., Caughley, T., Hugo, T. G., Løvold, M., Nystuen, G., & Waszink, C. (2016). *A prohibition on nuclear weapons: A guide to the issues*. International Law and Policy Institute (ILPI) & United Nations Institute for Disarmament Research (UNIDIR).
<https://unidir.org/files/publication/pdfs/a-prohibition-on-nuclear-weapons-a-guide-to-the-issues-en-647.pdf>

from ICAN Austria sees this as a norm against any stationing of nuclear weapons in any country, considering that TPNW is centred around human security.⁸⁶ TPNW is the first treaty in the realm of nuclear weapons that completely prohibits nuclear weapons and sets up a norm against disarmament and eventually nuclear sharing and eventually elimination of all the nuclear weapons from the world.⁸⁷ Secondly, the stringent nature of the TPNW could turn out to be a significant factor as to why the NWS and NATO members might see this as a difficult hurdle to never sign and ratify the TPNW. The rigorous requirements of the TPNW could turn out to endorse hesitation among the NWS and NATO members.⁸⁸ Moreover, a potential situation where the NATO members do not accept this provision but could accept other provisions is also highly unlikely as the TPNW does not allow any reservations under its Article 16.⁸⁹

To conclude, this needs to be understood that nuclear sharing arrangements are long standing systems which have influenced multiple policies of NATO over time. Both NPT and TPNW have addressed these issues in a very different manner which can eventually be reflected in how both of these thesis were negotiated and their overall purpose. In the case of NPT it is very clear that the interests of the major powers were taken into consideration as it has been reflected in this analysis. Therefore it can be concluded that the Article 1 and 2 have been negotiated to cater to the needs of major powers during the 1960's instead of providing a comprehensive solution to the nuclear sharing process, also considering the unambiguous interpretation which makes it clear that the NPT does not aim to completely prohibit the states to avoid nuclear sharing.

TPNW on the other hand has completely banned sharing and stationing of nuclear weapons in other countries and illustrates contrasting principles as compared to the NPT. The TPNW was negotiated through a very different process which included multiple meetings of the United Nations, eventually leading to the Resolution 71/258, adopted on December 23, 2016 that led to the adoption of the TPNW in 2017. Different dynamics of

⁸⁶ International Campaign to Abolish Nuclear Weapons. Schmidt, N. Personal Communication. 14th August, 2024.

⁸⁷ International Campaign to Abolish Nuclear Weapons. Schmidt, N. Personal Communication. 14th August, 2024.

⁸⁸ Childers, G. M. (2023). *Mutually assured disarmament? The future of NATO's nuclear sharing program under the Treaty on the Prohibition of Nuclear Weapons*. University of Georgia School of Law. <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2577&context=gjicl>

⁸⁹ TPNW, 2016

power relations are portrayed in this case as these negotiations concluded NNWS, civil society and centred around the approach that the TPNW is based on the human security approach and a humanitarian perspective towards nuclear disarmament. Therefore, it needs to be understood that although most of the NATO members involved in the nuclear sharing process have not signed and ratified the TPNW, this ready aims to set up a norm against any form of nuclear sharing by gaining the support of state parties which have signed and ratified the TPNW ⁹⁰, which could lead into further development of customary international law too.

However, it also needs to be taken into consideration that completely prohibiting nuclear sharing on a realistic level will be a very difficult challenge which would require cooperation on a very high level and change in the policies of deterrence for a lot of major powers, especially NATO but also Russia. Despite the fact only the NATO nuclear sharing provisions were discussed in this topic, it is not a surprise that in 2024 when the war in Ukraine is still continues, Russia has also moved their nuclear weapons into Belarus several hundred miles closer to the NATO territory, ⁹¹ which officially marks the first time they have stored nuclear weapons outside the country since 1991 after the fall of the USSR.⁹² This continues to heighten more tensions in the region and can potentially continue considering the strong interest of Poland to participate in the NATO nuclear sharing.

⁹⁰ International Campaign to Abolish Nuclear Weapons. Schmidt, Nadja. Personal Communication. 14th August, 2024.

⁹¹ Detsch, J., & Gramer, R. (2024, March 14). *Russia's nuclear weapons are now in Belarus*. Foreign Policy. Retrieved from <https://foreignpolicy.com/2024/03/14/russia-nuclear-weapons-belarus-putin/>

⁹² Koettl, C. (2024, May 11). *Satellite images reveal where Russian nukes could be stored in Belarus*. The Japan Times. Retrieved from <https://www.japantimes.co.jp/news/2024/05/11/world/russian-nuclear-weapons-belarus-satellite-images/>

Chapter 4: Analysing the Provision of Disarmament in the NPT and the TPNW

Understanding Disarmament

Disarmament is one of the main provisions in the major treaties related to nuclear weapons. It includes abolishing, limiting and eventually destroying the nuclear weapons mainly in order to avoid conflict, promote peace and improve the relations between the states. The exact definition of disarmament is neither explicitly mentioned in the NPT nor the TPNW but it has been very central in the United Nations and the concept of disarmament itself has played an important role in maintaining peace and security. The Article 11 (1) of the charter of the United Nations states *“The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.”*⁹³ There have been multiple discussions in the United Nations General Assembly regarding disarmament and the two main treaties being compared in this paper in the realm of nuclear weapons also have specific articles for disarmament. In fact, the three pillars of the NPT itself include non-proliferation, promoting peaceful use of nuclear energy and disarmament Whereas, the three pillars of the TPNW also include disarmament along with prohibition and assistance and prohibition. The provision of disarmament will be thoroughly explored in this chapter of this paper. This includes comparing the texts of the TPNW and NPT, finding and comparing their loopholes in order to deepen our understanding about the authorities of these treaties to contribute in the elimination and disarmament of the nuclear weapons.

Disarmament Provision in the NPT

Firstly, Article 6 represents one of the most important principles in the NPT as it signifies the importance of global nuclear disarmament. The official text of this article states *“Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on*

⁹³ United Nations. (1945). Charter of the United Nations. Retrieved from <http://www.un.org/en/sections/un-charter/un-charter-full-text/>

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”⁹⁴ This official text in the NPT has multiple loopholes and has been criticised for being “vague”. The International Court of Justice in their 1996 advisory opinion declared that Article 6 does not impose an obligation of conduct to pursue disarmament, instead they oblige the states to pursue negotiations by adopting a particular course of conduct and and pursue the negotiations in “good faith”⁹⁵ The issue with this Article is that it tells us “what to do” but not “how to do”. Article 6 mentions ‘cessation of nuclear weapons at an early date’.⁹⁶ The term “early date” itself is very vague and does not provide a specific time period or an exact date when the states should actually fulfil this obligation under the NPT. Ford, 2007 explained how this ambiguity is a very well observed pattern in the other articles of NPT itself, reflected in the wordings adopted in the Article 1 and 2 of the NPT vs Article 3 of the NPT. The former Articles mention “undertake not to transfer nuclear weapons to any recipient” and “undertakes not to receive nuclear weapons and other nuclear materials from other states. On the contrary, the Article 3 of the NPT is much more clearer as the official text states “undertakes to accept” and the procedures of safeguards and procedures “shall be accepted” and followed. The very interesting question which Ford, 2007 posed is that, did the negotiators of the NPT themselves found it impossible to clearly enforce a stronger obligation to pursue disarmament.⁹⁷ Furthermore, Ford also mentioned the provision of disarmament in the preamble of the NPT itself in addition to the article 6. The preamble requires all the states to ‘undertake effective measures in the direction of disarmament and ‘declare their intention’ to ease the international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons,”⁹⁸ This further makes the provision of disarmament vague and provides an idea to move towards the end instead of serving as a comprehensive instrument to employ in order to disarm. Hajnoczi, 2020 has explained how the Article 6 of the NPT is based on an assumption that the

⁹⁴ NPT, 1968

⁹⁵ Ford, C. A. (2007). Debating disarmament: Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons. *Nonproliferation Review*, 14(3), 401-428. <https://doi.org/10.1080/10736700701611720>

⁹⁶ NPT, 1968

⁹⁷ Ford, 2007

⁹⁸ Ford, 2007

disarmament will be achieved after a number of years. It needs to be taken into consideration that the NPT was extended indefinitely in 1995 where the NPT membership agreed to pursue the goal to move towards a nuclear weapon free world under Article 6. This was also entrenched in the objectives of this decision in 1995 and also 2000 and 2010 review conferences. However, contrary to that, they still have not achieved the full implementation of this article. It could be potentially a cause of concern that the states might never implement this article and extension the NPT indefinitely could turn out to be a major loophole.⁹⁹

Disarmament Provision in the TPNW

Moving on to the provision of disarmament in the TPNW, the Article 4 of the TPNW is much more comprehensive as compared to the Article 6 of the NPT firstly as it is much more specific. The Article 4 (1) clearly states that the states are obliged to enter into a safeguards agreement with the International Atomic Energy Agency (IAEA). The TPNW advances the safeguards regime and are obliged to keep in place any safeguards agreement they have. They also have to provide a credible assurance to not diverge the declared nuclear material from peaceful usage of nuclear activities as a whole within 180 days of the TPNW entering the force. Hence it is safe to say that the TPNW strengthens the safeguards regime much more as compared to the NPT.¹⁰⁰

Under the obligations of Article 4 (2), the states which possess nuclear weapons are legally obliged to remove them before a specific deadline which has to be determined by the state parties with a legally binding time bound plan to pursue the irreversible elimination of the nuclear weapons.¹⁰¹ The states are moreover even obliged to submit a comprehensive plan to a competent international authority which is decided by the state parties after which it could be negotiated with that authority.¹⁰² In addition, the TPNW strengthens the disarmament regime by further employing an international authority to negotiate irreversible conversion of nuclear weapons, and each party is obliged to submit

⁹⁹ Hajnoczi, T. (2023). Legal reflections on the irreversibility of nuclear disarmament. *Journal for Peace and Nuclear Disarmament*, 6(2), 303-309 <https://doi.org/10.1080/25751654.2023.2293501>

¹⁰⁰ Hajnoczi, T. (2023).

¹⁰¹ TPNW, 2017

¹⁰² Treaty on the Prohibition of Nuclear Weapons, July 7, 2017. Retrieved from <https://ihl-databases.icrc.org/assets/treaties/640-TPNW-EN.pdf>

a report during the meeting of the state parties regarding the progress they have made under their obligations of Article 4. Hence, in this case it is clear that the TPNW has strengthened the IAEA safeguards regime and goes a level up beyond the NPT in this aspect. This comprehensive system has been deemed highly feasible by experts like Hajnoczi, 2020 as it makes sure that the nuclear materials are not diverted and states do not get involved into undeclared activities, building a more robust framework in the area.¹⁰³ Dr Nadja Schmidt from ICAN in the interview for this thesis was also asked a question regarding this topic where she signified that modernisation of nuclear weapons is still allowed under the NPT did not outline how the states should proceed with the disarmament process¹⁰⁴ This makes TPNW a significant treaty as it constructs another legal layer and helps to push forward the implementation of article 6, which has also been signified by Hajnoczi, 2020 stating that “the NPT was never meant to be comprehensive solution to disarmament and Article 4 will add another legal layer to this”.¹⁰⁵ Certainly, it can be concluded that the TPNW has taken a step up in the disarmament provisions.

The legal concepts of Pactum de Contrahendo and Pactum de Negociando, two very important concepts from the civil law related to obligations and preliminary agreements need to be deeply understood and employed in this case to better comprehend the situation. Pactum Negociando is a latin term which literally translates to “agreement to negotiate”. Under this kind of obligation, the parties must commit themselves to enter negotiations and contract but does not guarantee an end result or a final contract. The main focus is to focus on the negotiating process in “good faith”.¹⁰⁶ The principle of good faith itself is a subjective concept of honesty rather than a legal and enforced obligation.¹⁰⁷ On the other hand, Pactum de Contrahendo in latin means “agreement to contract”, referring to a situation where the parties to the contract outline the intentions of concluding a specific contract in the future. This kind of agreement legally

¹⁰³ Hajnoczi, T, 2020)

¹⁰⁴ International Campaign to Abolish Nuclear Weapons. Schmidt, N. Personal Communication. 14th August, 2024.

¹⁰⁵ Hajnoczi, 2020

¹⁰⁶ Mik, C. (2020). *Pactum de negotiando and pactum de contrahendo as international obligations in the present international law*. *Polish Yearbook of International Law*, 40, 247-268. <https://doi.org/10.24425/pyil.2021.138428>

¹⁰⁷ Quagliato, P. B. (n.d.). *The duty to negotiate in good faith*. TeleTech Brazil Services Ltda. Retrieved from <https://quagliatoadvogados.com.br/artigos/The-duty-to-negotiate-in-good-faith.pdf>

binds the parties to move towards the finalisation of the contact.¹⁰⁸ The TPNW in this case can be regarded as “Pactum de Contrahendo” as opposed to “Pactum de Negociando” as the situation of concluding a specific framework has been drafted in the TPNW text. It is very certain that the TPNW state parties will certainly push for the implementation of Article 6 at the NPT review conferences to promote disarmament.

Further sets of critics for this mandate come from the NWS, especially the United States of America. Wood, 2017 from the American Delegation claimed that the TPNW can damage the NPT by exacerbating political tensions on disarmament and creating polarisation such as “nuclear weapon supporters” and “nuclear weapon banners” rather than recognising shared interests, which will affect the major institutions of disarmament such as the NPT’s review conference. This polarisation under the TPNW was regarded as a “recipe for failure”.¹⁰⁹ Scholars from NAIL responded to this statement stating that this “polarisation” is a positive sign rather than a negative and it would be much more concerning if an opposite scenario was to happen, i.e the TPNW member states advocating their own stance and adopting the policies and deterrence method being employed by the NWS instead.¹¹⁰ Moreover, polarisation in this field is a common phenomena since the inception of nuclear weapons when although the nuclear weapons were being built by the major powers, the issue was being discussed by multiple scientists in the area such as Federation of American Scientists (FAS) and Japanese 被爆者 “*hibaku sha*” (survivors of the atomic bombing). These organizations introduced concepts such as “One world or none”.¹¹¹ One of the other cases of polarizations in the field of nuclear weapons was also observed in the 1970’s when the USSR highly improved their military capabilities and NATO’s response was the adoption of the “Dual Track Policy”. Under this scheme they aspired to modernise their nuclear arsenal and mobilise them in Europe, which worsened the relations between the NATO and the Warsaw Pact and led to

¹⁰⁸ Mik, C. (2020)

¹⁰⁹ Wood, R. A. (2017, October 12). *Statement by Ambassador Robert A. Wood, Delegation of the United States of America, 72nd UNGA First Committee, Thematic Discussion on Nuclear Weapons*. Reaching Critical Will.

https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com17/statements/12Oct_USA.pdf

¹¹⁰ Nystuen, G., Egeland, K., & Hugo, T. G., 2018

¹¹¹ Wittner, L. S. (2015). Nuclear Disarmament Movements. *Contemporanea*, 18(4), 635–639. <http://www.jstor.org/stable/24654190>

anti-nuclear protests in Europe.¹¹² This issue was specifically applicable in Italy which was designated as one of the five important countries where these missiles were to be stored.¹¹³ These peace protests which signify complete polarization played a critical role in shaping the broader context of nuclear disarmament and pressurised the states to conclude the Intermediate-Range Nuclear Forces (INF) treaty under which the US and the USSR agreed to eliminate their nuclear and conventional ground-launched ballistic and cruise missiles with ranges of 500 to 5,500 kilometers.¹¹⁴ This kind of polarisation was necessary in the case of Dual Track system as it led to the negotiations and a positive result. Hence, it can be concluded that the polarisation of state parties in this field does not indicate a worse scenario and it is important to challenge the current global dynamics in this field. Since one of the major goals of the TPNW is to establish a norm against nuclear weapons itself and persuade the states to disarm, it is moving towards this goal by strengthening the current regime and creating a system where states are obliged to pursue disarmament under the system of “Pactum de Contrahendo”

¹¹² Supreme Headquarters Allied Powers Europe. 1979-1989: "Dual Track" Decade - New Weapons, New Talks. Retrieved from <https://shape.nato.int/page214610458>

¹¹³ Baumeister, M., & Ziemann, B. (2021). Introduction: Peace movements in Southern Europe during the 1970s and 1980s. *Journal of Contemporary History*, 0(0), 1–16. <https://doi.org/10.1177/00220094211014940>

¹¹⁴ Arms Control Association. (n.d.). *The Intermediate-Range Nuclear Forces (INF) Treaty at a glance*. Retrieved August 31, 2024, from <https://www.armscontrol.org/factsheets/intermediate-range-nuclear-forces-inf-treaty-glance#:~:text=The%201987%20Intermediate%20Range%20Nuclear,of%20500%20to%205%2C500%20kilometers>

Chapter 6: Withdrawal from the Treaty: Article 10 of NPT and Article 17 of TPNW

Introduction to Withdrawal

In a multilateral world, a lot of states enter into agreements with other states, companies, organisations, non-governmental bodies and so on. These agreements are made in different forms such as conventions, treaties, protocols, executive agreements etc. Treaties are binding agreements between the parties and are governed by international law. States voluntarily enter into an agreement with different parties and as we will discover in this paper later, the states might have some instance and as we when they cannot comply with the obligation of a specific treaty.

Most of the treaties are governed by the “Mother of all treaties”, i.e the Vienna convention on the laws of treaties and mainly include some provisions to exit the treaty in case something happens. The conditions often include informing the parties of the treaty, along with explaining the reasons for withdrawal, and some treaties often set specific timelines to advocate the actual withdrawal, i.e specific time after the state does not have to be obliged by the treaty anymore. For instance the Paris agreement has conditions such as the states can withdraw from the treaty after three years it has entered into force and the party has to withdraw by sending a written notification to the depository. The withdrawal can only take place upon expiry of one year from the date of receipt by the Depository of the notification of withdrawal.¹¹⁵

The provision of withdrawal is governed by the Article 54 of the VCLT (Vienna Convention of the Laws of Treaty which states that “*The termination of a treaty or the withdrawal of a party may take place in conformity with the provisions of the treaty or at any time by consent of all the parties after consultation with the other contracting States.*”¹¹⁶

Both the TPNW and the NPT have provisions of withdrawal from the treaty, codified in the Article 10 and 17 of the treaties respectively. The provision of withdrawal in the realm of nuclear weapon is extremely complex as the parties to these treaties are often required to go through complex procedures such as entering into a safeguards agreement

¹¹⁵ United Nations (2015). Paris Agreement.

¹¹⁶ Vienna Convention on the law of treaties (with annex). (1969). Retrieved from <https://treaties.un.org/doc/publication/unts/volume 1155/volume-1155-i-18232>

with international organisation such as the the IAEA, exchange nuclear materials along scientific and technological information for peaceful use¹¹⁷ and a lot more as mentioned both in the NPT and TPNW. However, there can be significant consequences when a state withdraws from the major treaties in the realm of nuclear weapons such as the NPT and the TPNW, along with noticeable repercussions for the related parties too. It could also lead to significant disruptions on initiatives heavily relying on the treaty's framework.

This section will explore and compare the provision of withdrawal in both the NPT and the TPNW. This would involve comparing the legal texts and how both the treaties differently employ this provision of withdrawal. The case study of North Korea, which is the only party to leave the NPT will also be explored in this section.

Withdrawal in the NPT: Analysing Article 10 of the NPT

The clause for withdrawal in the NPT is mentioned in Article 10 of the treaty. The official text states, *“Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests”*.¹¹⁸ Scholars have identified multiple loopholes in this Article governing the provision of the NPT. Maitre, 2023 has claimed that the negotiators of the NPT did not fully explain the implementation and interpretation of this article. The NPT indicates that a withdrawal can only be initiated when the treaty has jeopardised the supreme interests of the country, not in a condition if the events jeopardising the interests are likely to happen in the future.¹¹⁹ The phrasing of the Article 10 closely resembles the 1963 PTBT (Partial Test Ban Treaty). In the framework of the PTBT, the potential triggers for the withdrawal included circumstances such as explosions conducted by other state parties, eventually leading to threatening the security

¹¹⁷ NPT, 1968

¹¹⁸ NPT, 1968

¹¹⁹ Maitre, E. (2023). *Withdrawing from the NPT: Legal and strategic considerations* (Note n°07/23). Fondation pour la recherche stratégique. Retrieved from <https://www.frstrategie.org/sites/default/files/documents/publications/notes/2023/202307.pdf>

of a state party. Maitre, 2023 has described that these situations were probably viewed by the negotiators of the NPT that could warrant a state's decision to withdraw. It was mainly to persuade the countries such as Italy and the Federal Republic of Germany at that time to reconsider their status of a NNWS in case there are some significant geopolitical changes, also to ensure that it was possible to exit the treaty in case a non-party state ends up acquiring nuclear weapons.¹²⁰

The first issue with this particular article is that although a withdrawal can be considered if the treaty has jeopardised the supreme interests of a country, the qualification to characterise what exactly defines “supreme interests” has been left to the qualification by the state and therefore has a subjective and a self-interpretative nature. Even during the negotiations of the NPT, there was no definite interpretation about what exactly would constitute a legitimate ground for withdrawal under Article 10.¹²¹ Hence, it is the right of the state party to determine what “extraordinary events” would jeopardise their “supreme interests”. Coppen, 2014 has highlighted that this provision is very similar to this approach and is very similar to the “flexibility within legal certainty” notion usually found in other WMD related agreements, and the states do not face a lot of obstacles if they decide to withdraw their membership from a treaty.¹²² After 2003, when North Korea withdrew their membership from the NPT under this Article, a lot of western states regarded this as a “legal loophole”.¹²³ Coppen, 2014 has also pointed out that this article only covers the grounds, process and reasons for the withdrawal but fails to cover the logistical part such as the material consequences for withdrawal.¹²⁴ For instance, the state parties have to sign a safeguards agreement with the IAEA when they enter the NPT and they might receive assistance and material to use that for peaceful purposes such as nuclear energy. Soloski, 2010 has conveyed that this loophole can technically allow a state party to develop or import some technology under Article 4 of the NPT¹²⁵ and then use the provision of withdrawal under Article 10 and produce nuclear weapons, which contradicts with the

¹²⁰ Maitre, 2023

¹²¹ Coppen, T. (2014, May 11). *Good faith and withdrawal from the Non-Proliferation Treaty*. QIL-QDI. Retrieved from <https://www.qil-qdi.org/good-faith-and-withdrawal-from-the-non-proliferation-treaty/>

¹²² Coppen, 2014

¹²³ Major Proposals to Strengthen the Nuclear Nonproliferation Treaty. A Resource Guide for the 2010 Review Conference', *Arms Control Association*, March 2010. (As cited in Coppen, 2014)

¹²⁴ Coppen 2014.

¹²⁵ NPT, 1968

whole purpose of the NPT itself.¹²⁶ The requirement of withdrawal in general has been explained in the codified law, specifically in the VCLT. Article 70 of the VCLT states *that unless stipulated by a treaty, or unless otherwise agreed by its parties, a treaty firstly frees the party from obligations to further implement the treaty and secondly, does not affect the rights, obligations or legal status of the party, that have arisen from implementation of the treaty prior to withdrawal from it.*¹²⁷ Article 10 is also in line with this provision of the NPT. Therefore, it can be said that this provision is still being ruled by a general law implied in the VCLT instead of a special law for this particular case. To further understand this, the concepts of "lex generalis" and "lex specialis" need to be understood. Lex generalis is the general law which governs a legal obligation and Lex specialis is a specific law which supersedes the Lex generalis. This term is often used in the realm of international law. As already discovered previously, the issue with the NPT is that since it has no rules to govern the withdrawal from the treaty and due to that the general principle of the VCLT applies in this case. In case there was a specific rule to govern this provision, the special law could be applied and the states might have to face more consequences and take more legal responsibility during and after their withdrawal from the NPT. Soloski, 2012 has also said that this article needs to be revised so the states return borrowed material. This article needs to be revised and amended by the NPT member states, so the states are obliged to return the materials they borrowed from other states during the period of their membership in the NPT and elevating the requirements to pursue withdrawal is an essential step to make NPT stronger.¹²⁸

Many state parties have expressed concerns over this Article especially after North Korea withdrew from the treaty. A few state parties have also expressed concerns regarding Article 10 as a means to abuse the treaty and develop a military program by utilising the aid received as a member of the treaty. In the 2010 NPT review conference, some states also mentioned ways to ensure that these materials are not diverted for military purposes.¹²⁹ The United States of America at the PrepCom (2007) Preparatory

¹²⁶ Sokolski, H. (2010). *Reviewing the Nuclear Non-Proliferation Treaty*. Retrieved from <https://ssi.armywarcollege.edu/2010/pubs/reviewing-the-nuclear-nonproliferation-treaty-npt/>

¹²⁷ VCLT, 1969

¹²⁸ Soloski, 2012

¹²⁹ Harvey, C. (2010). *Major proposals to strengthen the Nuclear Nonproliferation Treaty: A resource guide for the 2010 review conference*. Arms Control Association.

Committee for the 2010 NPT conference called out the state parties to develop “a wide range of actions” to prevent states from abusing the withdrawal clause.¹³⁰ This was a very controversial statement as in 2005 they took an opposite position claiming that all the parties to the NPT have a “sovereign right to withdraw from the NPT”¹³¹ States like the Republic of Korea which have been particularly affected by the DPRK withdrawal from the NPT also proposed some measures such as a “two-layered approach to an announcement of withdrawal. The first step in this proposal would be an emergency meeting when a state party has announced their withdrawal, so they can explain their reasons for withdrawing and cause the least damage by returning the nuclear material received. In addition they also prompted security council consideration of withdrawal.”¹³²

The next issue which has often been discussed by scholars and state parties to the treaty is that Article 10 only obliges the withdrawing state to submit a three month notice to the United Nations Security council and other state parties to actually withdraw their membership from the NPT. States have criticised this because three months is simply not enough time for the state parties to negotiate with the withdrawing party and thus, it does not allow them to potentially challenge the decision taken by the party.

Withdrawing from the TPNW: An analysis

Next the provision of withdrawal from the TPNW will also be explained. TPNW being a fairly new treaty in the nuclear domain also included the provision of withdrawal in its premises. The official text of the TPNW states *“This Treaty shall be of unlimited duration. 2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of the Treaty have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to the Depositary. Such notice shall include a statement of the extraordinary events that it regards as having jeopardised its supreme interests. 3. Such withdrawal shall only take effect 12 months after the date of the receipt of the notification of withdrawal by the Depositary. If, however, on the expiry of that 12-month period, the*

¹³⁰ Harvey, 2010

¹³¹ Bunn, G. (2005). *Right to Withdraw from the NPT: The Views of Two NPT Negotiators*.

Retrieved from https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/Bunn_Timerbaev.pdf

¹³² Harvey, 2010

withdrawing State Party is a party to an armed conflict, the State Party shall continue to be bound by the obligations of this Treaty and of any additional protocols until it is no longer a party to an armed conflict. Hence, it signifies that the treaty is for unlimited duration and just like the NPT, the states still have the right to withdraw from the treaty if they decide that extraordinary events have jeopardised their supreme interests. This is very similar to the NPT but has some changes which, along with its critiques, will be explored in this section.

The first major change is that sending the notification to the UNSC and the state parties has been extended from three months to twelve months. Secondly, the TPNW does not allow the state parties to withdraw their membership as long as they are involved in an armed conflict.¹³³ This new period can certainly allow the state parties to negotiate with the withdrawing party. However, critics have pointed out that a period of twelve months is not sufficient to pursue total nuclear disarmament. Hajnoczi, 2023 pointed out the notion of irreversibility in the domain of nuclear weapons and has challenged the whole point of withdrawal itself. He described irreversibility as a very important factor in the effectiveness of disarmament. There are unilateral agreements for disarmament along with the regional efforts such as the NWFZs mentioned in the previous sections. However, according to him, complete disarmament will heavily rely on the condition about how easy it is to completely withdraw from the treaty. The utmost and the most difficult condition in irreversibility would be taken place by a treaty that completely and explicitly prohibits withdrawal.¹³⁴ In this context it is very important to question the whole clause of withdrawal itself because if it is easy for a party to withdraw from a treaty committed to completely prohibit the nuclear weapons, it defers the whole purpose. Hence, in order to ensure the right path to disarmament, treaties should be restricting the parties to withdraw, or make sure that they have some legal responsibilities if they withdraw by amending Article 17. The state parties also should be performing their duties to keep their agreements in order with “*pacta sunt servanda*” as also signified in the Article 26 of the VCLT¹³⁵, which literally translates to “*agreements must be kept*”.

¹³³ TPNW, 2017

¹³⁴ Hajnoczi, 2023

¹³⁵ VCLT, 1969

Moving on to the second provision, scholars have supported and criticised the second major change of not allowing the state parties to withdraw as long as they are involved in armed conflict. Involvement in an armed conflict means that the states tend to use conventional weapons against other states. Although it has only happened once during the second world war, it increases the risk of the usage of nuclear weapons if the things escalate to a point, especially in the current geopolitical framework where a number of countries, including the nuclear weapon states such as the Russian Federation are at war. The US, which possesses the second largest nuclear arsenal in the world has explicitly stated that once a war has begun, they would 'no longer feel bound' by the NPT.

¹³⁶ The US made this statement during the NPT but considering this aspect in the terms of TPNW negotiations could also lead to some conclusions. If a state is a party to the TPNW and is involved in long running conflicts such as the current Ukraine war or Vietnam war, it will completely prevent them from leaving the NPT, which in theory should be very beneficial. However, scholars from Norwegian Academy of International Law (NAIL) have signified that many of the TPNW supporters believe that the nuclear armed states will only ratify the TPNW if they acknowledge themselves that the nuclear weapons are unacceptable. Assistant Secretary of the Bureau of Arms Control, Deterrence and Stability at the U.S Department of State who served as a Director of Arms Control, Disarmament and Nonproliferation at the National Security Council since January 2021, along with the Deputy legal advisor at the US department of state handling non-proliferation issues from 1990 to 2017 have analysed the Article 17 from the American perspective and have mandated that if there is a specific country which might pose a threat could make a lot of progress in their nuclear program in one year and the other party to the TPNW cannot respond to them as they are obliged to non-proliferation, there could be issues. The state can potentially take legal action against the adversary but they cannot eventually restart their nuclear program as they are bound by the TPNW obligations.¹³⁷ Furthermore, in a condition where the adversarial state has not ratified the TPNW, the other state would potentially have to wait for twelve months before responding to it and at least have a

¹³⁶ Butcher et. al, 1997

¹³⁷ Highsmith, N., & Stewart, M. (2018). The nuclear ban treaty: A legal analysis. *Survival*, 60(1), 129-152. <https://doi.org/10.1080/00396338.2018.1427371>

condition of MAD (Mutually Assured Disarmament).¹³⁸ For instance, if the US joins the TPNW, they could potentially be in a situation where they would have to wait for a whole year to legally rebuild their nuclear program. They have seen this as one of the biggest obstacles for US and other NWS to potentially become a state party to the TPNW.¹³⁹ Another important situation they have mentioned is that the NWS would not commit to complete disarmament if they are prohibited to even reconstruct their program even if they face a nuclear threat from either a non-party or a treaty violator.¹⁴⁰

Therefore, this chapter of the thesis was aimed to explore the provision of withdrawal in both the NPT and the TPNW. Both of these critics allow the state parties to withdraw their membership from the treaty if their supreme interests are being jeopardised. In addition to all of the critics mentioned above there is a third set of arguments that could be possibly investigated in this arena, which is completely prohibiting the states from withdrawing from the nuclear disarmament treaties. This was one of the key questions asked to Dr Nadja Schmidt from ICAN during the interview for this research, especially considering that the main goal of the TPNW is to promote human security, and she answered that ICAN is supportive of this provisions and it is an acceptable upgrade from the NPT.¹⁴¹ The next relevant question asked to her was *“I’ve noted that although the TPNW has extended the withdrawal time from 3 to 12 months, there is also a special provision under which states cannot exit the treaty if they are at war. I’ve found this could be a significant obstacle for NATO states or the United States to sign and ratify the treaty, as it conflicts with the nuclear sharing arrangements.”* Dr Nadja Schmidt responded as *‘Yes, but I think a state that still adheres to nuclear weapons doctrines and places nuclear weapons at the centre of its security strategy would not join the TPNW in the first place. So, I don’t believe that the withdrawal provision is the main obstacle preventing nuclear-weapon states and NATO states from joining. If a state decides to pursue the path of a nuclear-weapon-free world and disarmament, it’s likely committed to that path and wouldn’t change course quickly, even if circumstances change, in my personal view.’*

¹³⁸ Sokolski, H. D. (Ed.). (2004). *Getting MAD: Nuclear mutual assured destruction, its origins and practice*. Strategic Studies Institute. Retrieved from <https://apps.dtic.mil/sti/tr/pdf/ADA428336.pdf>

¹³⁹ Higsmith & Stewart, 2018

¹⁴⁰ Higsmith & Stewart, 2018

¹⁴¹ International Campaign to Abolish Nuclear Weapons. Schmidt, Nadja. Personal Communication. 14th August, 2024.

Therefore, the two arguments in this case would be, although it would be very ideal if the states cannot withdraw from the TPNW as they would be bound by its obligations indefinitely, it is also to consider that this provision itself will let these states ratifying the NPT and the second conclusion in this case would be that this article itself does not pose a major challenge as the NWS are still following the traditional security doctrines.

Chapter 7-Complimentary or Conflict: Understanding the relationship between NPT and TPNW

As analysed in the previous section, both TPNW and NPT share similar norms, aim to promote nuclear disarmament but are still very different in their aims and how they operate, taking into consideration that the NPT still tends to classify the NWS and NNWS, advocate for peaceful uses of nuclear energy and allows the subject of nuclear sharing to be of debate under its provisions whereas the TPNW is an initiative by the NNWS and aims to provide a more comprehensive approach which completely aims to ban the nuclear weapons. Their differences have led experts to think about a serious question, is the TPNW compatible with the NPT or do both of these treaties pose competition to each other. This section aims to explore and investigate this question by analysing different critiques in this area.

The first major critic is that the TPNW might undermine the NPT. It is of course very easy to speculate that NWS and NATO are one of the major critics of the NPT and they have raised these concerns. They have repeatedly argued that the TPNW's provisions undermine the NPT. Firstly it has been assumed that the TPNW will establish a regime which is not compatible with the NPT.¹⁴² Jiménez and Onderco, 2021 took up a study in which they analysed and compared the National positions on the TPNW by different countries and signified that the P5 Joint Statement concluded that the TPNW would undermine the disarmament architecture achieved with the NPT.¹⁴³ Critiques have seen this point as not valid because of multiple reasons which will be explored in this section. Article 18 of the TPNW states that *"The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are parties, where those obligations are consistent with the Treaty."*¹⁴⁴ Article 18 supports the idea that the TPNW would not prejudice or conflict with existing obligations among other treaties as long as it can be agreed that those obligations are compatible with the TPNW. This idea is also supported under the Article 30 of the VCLT which talks about

¹⁴² Rauf, T. (2020, November 22). *Does the TPNW contradict or undermine the NPT?* Toda Peace Institute. <https://toda.org/global-outlook/2020/does-the-tpnw-contradict-or-undermine-the-npt.html>

¹⁴³ Onderco, M., & Farrés Jiménez, A. (2021, June). *A comparison of national reviews of the Treaty on the Prohibition of Nuclear Weapons* (No. 76). EU Non-Proliferation and Disarmament Consortium. https://www.nonproliferation.eu/wp-content/uploads/2021/06/EUNPDC_no-76.pdf

¹⁴⁴ TPNW, 2017

the compatibility of the treaties in force. Article 30 (4) of the VCLT signifies that the earlier treaty (in this case the NPT) only applies up to an extent where its provisions are compatible with the later treaty (TPNW in this case). Hypothetically this signifies that if a state has signed and ratified both the TPNW and NPT, the TPNW obligations would be applied. Nonetheless, Dr Nadja Schmidt from ICAN has also said that the TPNW still needs the NPT.¹⁴⁵ The NPT is even mentioned in the preamble of the TPNW¹⁴⁶ and calls out for the full and effective implementation of the NPT. As an exception, Jiménez and Onderco, 2021 have also noticed that Germany also took a different position and stated that the TPNW does not pose a legal obstacle to the TPNW.

Next, in regards to safeguards, Article 3 of the TPNW signifies that each party to the treaty has to *“maintain their safeguards obligation at the time of entry into force of this treaty without prejudice to any additional relevant instruments that it may adopt in the future and . Each State Party to which Article 4, paragraph 1 or 2, does not apply that has not yet done so shall conclude with the International Atomic Energy Agency and bring into force a comprehensive safeguards agreement (INFCIRC/153 (Corrected)). Negotiation of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party. Each State Party shall thereafter maintain such obligations, without prejudice to any additional relevant instruments that it may adopt in the future.”*

The next statement that has been also repeatedly made by the NATO members regarding the safeguards regime of the IAEA, claiming that the TPNW does not set up the additional protocol of the IAEA comprehensive safeguards agreement as the standard, rather adopts the outdated verification system of the INFCIRC/153 IAEA comprehensive safeguards agreement.¹⁴⁷ This provision can be said to be true considering that during the TPNW negotiations, although high consideration was given to making the Additional

¹⁴⁵ International Campaign to Abolish Nuclear Weapons. Schmidt, N. Personal Communication. 14th August, 2024.

¹⁴⁶ TPNW, 2017

¹⁴⁷ Ford, C. A. (2018). *The Treaty on the Prohibition of Nuclear Weapons: A well-intentioned mistake*. U.S. Department of State, Bureau of International Security and Nonproliferation. <https://2017-2021.state.gov/remarks-and-releases-bureau-of-international-security-and-nonproliferation/the-treaty-on-the-prohibition-of-nuclear-weapons-a-well-intentioned-mistake/>

Protocol mandatory, unfortunately this approach was not adopted.¹⁴⁸ However, Rauf 2020 has signified that this is actually a better approach as it allows the NNWS to follow the existing safeguards and leave room to negotiate a stronger and a more robust verification. He sees the TPNW as a flexible instrument which would allow the states to further negotiate and strengthen global non-proliferation efforts. Therefore, he has claimed that the TPNW incorporates the changing standards and leads to a more secure regime.¹⁴⁹ It is also worth noting that although the TPNW does not include the technical details for the verification process, it is same in the NPT and NWFZ treaties and it is collectively left to the IAEA safeguards system and Rauf, 2020 has introduced the idea that the state parties to the TPNW, committed to prohibit the nuclear weapons can easily invite the IAEA to set up a working group to strengthen and further develop the verification mechanisms for the TPNW.¹⁵⁰ This seems to be a feasible approach under the mandate of the TPNW as the state parties to the TPNW under Article 8, *“shall meet regularly to take decisions in respect of any matter with regard to the application or implementation of the TPNW on further measures for nuclear disarmament”*¹⁵¹ and the first meeting of the state parties has to be conducted under a year of entry into force of the TPNW. Moreover, scholars from the Norwegian Academy of international Law have also implied that negotiating detailed verification provisions without the NWS and disarmament processes unlikely to take place in the near future was impractical and it was not the immediate purpose of the TPNW to establish a detailed verification regime.¹⁵² In addition, they have also underlined the fact the TPNW actually advances the safeguards regime by obliging the state parties to keep and implement their safeguards they have agreed to implement voluntarily, so the 132 states which voluntarily accepted the IAEA Additional Protocol are legally obliged to not withdraw from the those under the TPNW provisions unlike the NPT as under its provisions this would be a possibility and the state would still be in compliance with the NPT.¹⁵³

¹⁴⁸ Hilgert, L.-M., Kane, A., & Malygina, A. (2021). *The TPNW and the NPT* (Deep Cuts Issue Brief #15). Deep Cuts Commission.

https://deepcuts.org/media/pages/publications/issue-briefs/issue-brief-the-tpnw-and-the-npt/f77df09708-1701960384/deep_cuts_issue_brief_15-tpnw_and_npt.pdf

¹⁴⁹ Rauf, 2020

¹⁵⁰ Rauf, 2020

¹⁵¹ TPNW, 2017

¹⁵² Nystuen, G., Egeland, K., & Hugo, T. G, 2018

¹⁵³ Nystuen, G., Egeland, K., & Hugo, T. G, 2018

Therefore, although it has been repeatedly argued that there is a high risk of the TPNW undermining the IAEA safeguards regime, there is still room for discussing the legal ambiguities that how the TPNW will strengthen its safeguards regime and eventually follow the standards set up by the NPT or even create a better safeguards regime in the future and reduce uncertainty.

The next set of critiques come from the states that have claimed that the TPNW would delegitimize the extended deterrence policies and encourage the NNWS to develop different nuclear programs.¹⁵⁴ However the TPNW supporters refuse to accept the very idea of nuclear deterrence itself because in case a nuclear war was about to happen it would completely outweigh any short term benefits of deterrence, considering that the usage of nuclear weapons would lead to violation of multiple international laws and endanger basic human security, and hence nuclear weapons should not be used under any circumstances.¹⁵⁵

¹⁵⁴ Rauf, 2020

¹⁵⁵ Nystuen, G., Egeland, K., & Hugo, T. G, 2018

Conclusion: Towards the new norm?

Both the NPT and the TPNW have played important role to resolve the issue of nuclear weapons but multiple countries still possess more than 12000 nuclear weapons in 2024 and as the technology grows at an alarming rate in multiple spheres, the risk of advancement of the nuclear arsenals possessed by these countries also grows simultaneously. These nuclear arsenals need to be put at a halt as the tensions continue to rise in the current geopolitical climate in 2024. The two most important treaties in the domain of nuclear weapons have been very crucial to pursue the goal of disarmament, but have also faced criticism from both the opponents. The provisions of nuclear sharing, disarmament and withdrawal are indeed the most important elements to understand as they pose high risk and uncertainties for both NWS, NNWS and the nuclear client states.

It was observed in this paper that NPT has been called the “cornerstone of the nuclear-non proliferation for multiple years and although it has achieved multiple feats in promoting non-proliferation, it still has multiple legal gaps which need to be filled. It was observed in this paper that the NPT was negotiated highly in the interests of the major powers during that era. and has technically failed to prohibit the systems such as the NATO nuclear sharing system, although these are the core provisions of the NPT as Article 1 and 2 of the treaty.

In the case of disarmament, it has to be concluded that since the 1980's the NWS under the obligations of the NPT have made significant progress in the the process as the nuclear warheads possessed have dropped from a peak of 70,300 warheads in 1986 to 12,100 in early 2024 as a majority of disarmament took place in the 1990's.¹⁵⁶ However, there to be no obligation to completely disarm the nuclear arsenal under the provisions of the NPT the it fails to provide a detailed timeline framework for the states which they could follow to fulfil their obligations, and since the NPT was extended indefinitely in 1996, the NWS states can potentially keep their nuclear weapons indefinitely too. The main issue is with the application and enforcement of Article 6 of the NPT that has allowed the states to possess nuclear weapons up to this date.¹⁵⁷ The fact that the states are able to keep their nuclear weapons under the Article 6 and can also withdraw from the treaty anytime under

¹⁵⁶ Federation of American Scientists, 2024

¹⁵⁷ International Campaign to Abolish Nuclear Weapons. Schmidt, Nadja. Personal Communication. 14th August, 2024.

three months which is permissible under Article 10 of the NPT can create situations deemed nothing short of a crisis if the states receive aid to develop their nuclear program for peaceful energy and withdraw their membership to continue the nuclear program for different reasons.

TPNW on the other represents a collective effort by multiple NNWS and is highly centered around humanitarian society rather than the traditional concept of security centred around the number of weapons possessed by a state¹⁵⁸, since it emerged from the humanitarian initiative which was led by multiple states and civil society such as the ICAN. Many scholars have argued that the TPNW has addressed the legal gaps in the NPT such as completely prohibiting nuclear sharing, setting a timeline under Article 4 of the TPNW to pursue disarmament and extending the time for withdrawal from the treaty to twelve months from just three months and very importantly prohibiting the states to withdraw if they are involved in the war. The approach to promote human security adopted by the TPNW has gathered support from multiple countries but also has been subjected to multiple critics especially from the NNWS. However, Dr Nadja Schimdt from ICAN has signified that looking at the current geopolitical developments, it needs to be understood that the involvement of nuclear weapons would make the conflicts more serious and prone to escalation, and that is why it is important to challenge the traditional idea of deterrence as the nuclear weapons do not provide security, they do the opposite.

One of the main questions which could arise in this arena is how the TPNW would continue to strengthen the norm to prohibit nuclear weapons. Despite the strong oppositions TPNW has faced from the NWS and NATO, the state parties would conduct formal every year in order to review and strengthen the TPNW in provisions like victim assistance¹⁵⁹ and potentially more issues such as strengthening the safeguards system and achieving irreversible non-proliferation¹⁶⁰ depending on the future developments. Another benefit that has been observed by ICAN is that the TPNW meetings have provided the state parties a forum for open and creative discussions and negotiations to

¹⁵⁸ International Campaign to Abolish Nuclear Weapons. Schmidt, Nadja. Personal Communication. 14th August, 2024.

¹⁵⁹ International Campaign to Abolish Nuclear Weapons. Schmidt, Nadja. Personal Communication. 14th August, 2024.

¹⁶⁰ Hajnoczi, 2023

eventually move towards an international environment free of nuclear weapons. The NPT meetings provide a very different outlook as compared to this as the NPT review conferences are finding it challenging to adopt a consensus among the NWS and NNWS over several issues as discussed in this paper. Even the secretary general of the United Nations recognised the role of the TPNW as a tool to exert “useful pressure” on the states by sparking debates in the public discourse about the nuclear weapons and signifying the alternative security approaches. The TPNW has already had several visible impacts, including ABP which is one of the world's largest pension funds, deciding to divest from companies involved in nuclear weapons production.¹⁶¹

Nevertheless, it needs to be signified that the TPNW is still a new treaty and it would take multiple start party meetings and years of negotiations in order to pursue the NWS to ratify the TPNW and adopt the humanitarian approach as opposed to the traditional deterrence approach. Nonetheless, it has been signified that even for the NPT it took longer to achieve the number of signatories that the TPNW has today.

Looking forward, it has already been analysed and many scholars have agreed that although the approach adopted by the TPNW and the NPT is different, they are still compatible as they hold the end goal of a nuclear weapon free world. There is a possibility for the TPNW and NPT to simultaneously oblige and pressure the states to move towards total nuclear disarmament, as signified in the fact that the TPNW member states called out for the effective implementation of the NPT in the preamble of the TPNW. The negotiators of the TPNW have recognised the importance and role of the NPT to serve as the “cornerstone of nuclear weapons”. Hajnoczi, 2020 has recognised that the NPT was never meant to fully regulate the necessary aspects for the peaceful use of nuclear energy, non-proliferation, and nuclear disarmament and due to that another layer is essential for achieving a nuclear weapon free world which is the TPNW. It fits into the structural framework created by the NPT and makes the NPT regime even stronger.

To conclude, the NPT and the TPNW highly signify complementary approaches in the domain of non-proliferation and disarmament. The NPT since its inception has been regarded as the cornerstone of disarmament and non-proliferation. There were still multiple treaties adopted after the NPT, such as the NWFZ treaties which aimed to prohibit

¹⁶¹ Nystuen, G., Egeland, K., & Hugo, T. G. 2018,

the nuclear weapons in multiple regions of the world and certainly strengthen the norm against the usage or possession of nuclear weapons. Furthermore, there have been more bilateral treaties such as Strategic Arms Limitation Talks which have existed simultaneously with the NPT and have been based on a common goal of reducing arms and promoting international peace and security. Therefore despite having multiple critics, both of these have played and will play an important role to achieving a nuclear free world. This can be done in various ways such as acknowledging and recognising the significance of the TPNW in the NPT review conference which would reaffirm the role of NPT as the primary forum to collectively address the issue of nuclear weapons reduction and enforce the compatibility of both the treaties. The same could be said for the TPNW meetings as it already provides a forum where the NWS could participate as observer states. Nevertheless, it is very important to strive and aim for an ideal world free of nuclear weapons through sustained collaborations between multiple parties, dialogues, recognising the importance of both the NPT and TPNW and taking a step closer to a brighter future without nuclear weapons.

Recommendations for Further Research

This research focused on comparing the supporters and critics of the two most important treaties focused on the discipline of nuclear non-proliferation and disarmament, Treaty on the non-proliferation of Nuclear Weapons and Treaty on the prohibition of the nuclear weapons by analysing the three most important provisions of nuclear sharing, disarmament and withdrawal from the treaty. Despite the fact that the comparison along with the legal analysis led to a conclusion that the best method to move towards a nuclear weapon free world should emerge from the collaboration between the NPT and the TPNW, rather than the competition, it is very imperative that it would be very challenging to pursue the NWS to sign and ratify the TPNW. Therefore, an investigating the future strategies adopted by the civil society organisations, most notably ICAN, but also other organisations such as the Nuclear Age Peace Foundation,¹⁶² Reaching Critical Will¹⁶³ and PAX¹⁶⁴, just to mention a few. Different organisations in this field might have the same end goal but there is a high chance that they adopt different strategies and comparing these would provide insights to different ways to pursue the NWS to disarm their nuclear weapons. Dr Nadja Schmidt from ICAN was also asked about the global adoption and universalization of the TPNW in this research and provided useful insights such as such as how the slow progress in the TPNW ratification is not a unique obstacle for the treaty but rather a common instance for the treaties aiming to achieve universalization. She sees the real challenge in this case to pursue the NATO members to adopt this treaty which would be a long and challenging process. However the other organisations could have adopted a different approach and conducting interviewing multiple organisations would highly contribute to this research. The next topic to pursue further research in this arena should be the critical analysis of both NPT review conferences which take place every five years and the TPNW state parties meetings which happens every year. Further research could focus on analysing the patterns of success and failures in these meetings and investigating strategies to build a consensus, especially with the TPNW which is a newer treaty as compared to the NPT and has more frequent meetings. Lastly but arguably very importantly, further research in this field could focus on technological advancements such

¹⁶² Nuclear Age Peace Foundation, Retrieved from <https://www.wagingpeace.org/>

¹⁶³ Reaching Critical Will. Retrieved from <https://www.reachingcriticalwill.org/>

¹⁶⁴ PAX. Nuclear Weapons. Retrieved from <https://www.reachingcriticalwill.org/>

as artificial intelligence and missile technology and their implications on nuclear weapons and disarmament. As these technologies become more advanced and integrated into the military systems of the states, it would be imperative to control these by adding new amendments in the NPT and the TPNW and/or adopting a new treaty for this purpose.

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Appendix

A comprehensive research was conducted as a part of qualitative research for this interview with Dr Nadja Schmidt.

About Dr Nadja Schmidt:

Nadja Schmidt is the director and co-founder of the Austrian branch of ICAN, the International Campaign to Abolish Nuclear Weapons. Since 2017, Nadja has been the founder & CEO of Visuelles, a digital communications agency based in Vienna. Before getting involved with ICAN, she was working in the department for disarmament, arms control and non-proliferation at the Austrian Federal Ministry of Foreign Affairs, as research assistant at the University of Vienna, as consultant in the field of science communication and served as secretary general of the Austrian political science association. Nadja is also lecturing at the university of Vienna and the IES abroad Vienna. Nadja holds a masters degree in political science and communications from University of Vienna and a masters degree in interdisciplinary European science from the College of Europe.

Transcripts of the interview (AI was used to transcribe this interview)

Date: 14th August, 2021.

Interviewer: Dear Dr Nadja Schmidt, thank you so much for your time and cooperation in this interview. The first question I want to ask you is about the universalization of the TPNW. As we know, ICAN is a big advocate for the TPNW, but there are still many challenges in its universalization. What do you think is one of the biggest challenges that the TPNW is not as universalized as compared to the NPT?

Interviewee: Well, I wouldn't necessarily say it's the biggest challenge, but one significant issue is the current global international environment. The state of multilateral cooperation is not particularly strong at the moment. This weakening of multilateral efforts can be seen as a major obstacle to the universalization of the TPNW.

However, on the other hand, if you look at the number of states that signed the TPNW in 2017, it's quite impressive. This high number is a good indicator of where universalization could go because these states have shown support. Many of them shouldn't have any problems ratifying the TPNW.

There are still many states that haven't signed, or that have signed but not ratified. This process is ongoing, and it's important to remember that the TPNW is still a very young

treaty—only seven years old. The NPT, for instance, took a long time to reach the number of signatories that it has today.

When the NPT came into effect in the late 1960s and early 1970s, it also took a long time for membership to grow to the point where we could discuss it as a nearly universal treaty. So, I think international treaties need time for states to ratify them. Compared to other treaties, the TPNW is not small. Many people compare it to the NPT nowadays, but the NPT also took several years to reach a substantial number of supporting states.

I wouldn't say that the slow progress is an obstacle unique to the TPNW; rather, it's normal for treaties to take time to gain widespread support. Of course, it currently seems that mainly non-nuclear-weapon states and the initial signatories from 2017 will be the first to support it. There's still a long way to go before host states, NATO states, or nuclear-weapon-possessing states join the process.

Interviewer: Thank you. Would you also say that the NATO nuclear sharing program presents a significant obstacle to the universalization of the TPNW? If we compare the TPNW to the NPT, the NPT was negotiated in a way that supported the NATO nuclear sharing system. After negotiations between the US and the USSR, this system was integrated into the treaty. So, do you think that NATO members and the nuclear sharing system could be a major obstacle to universalization, along with the nuclear-weapon states?

Interviewee: Yes, the NATO nuclear sharing program does present a challenge to the TPNW's universalization. However, it's important to consider what we mean by "universal." Is it universal when every state has joined, or when a majority of states have joined? The TPNW doesn't differentiate between states in the same way that the NPT does. The NPT has different obligations depending on whether a state is a nuclear-weapon possessor or not, while the TPNW creates a level playing field for all states.

Interestingly, states can join the TPNW even if they still possess nuclear weapons, as long as they have a clear timetable for disarmament. In contrast, under the NPT, states can only join as non-nuclear-weapon states, meaning disarmament must take place before joining.

To reiterate, the idea of the TPNW is to change the narrative around nuclear weapons. The TPNW aims to develop a force over time that advocates for a world without nuclear weapons. It's the first treaty that explicitly states that these weapons are inhumane and should not exist. This treaty codifies that stance, making these weapons illegal.

Interviewer: How does the TPNW aim to establish a norm for future disarmament efforts?

Interviewee: The TPNW sets a new standard for disarmament, and importantly, states can become a party to the TPNW without having to disarm first. But how would this work for nuclear-weapon states? Even though the TPNW is setting up a norm for disarmament, how is ICAN trying to convince these nuclear-weapon states to sign and ratify the TPNW, especially in this challenging geopolitical environment?

Interviewee: The current focus is on those states that supported the treaty in 2017. But beyond that, it's also about how we view current developments and security. The TPNW is one of the first treaties to put a different concept of security at its centre—human security—rather than the traditional concept of security based on weapons systems and the number of weapons a state possesses.

If we look at current developments and conflicts, we can ask: Do nuclear weapons make these conflicts safer? Do they make conflicts more complex, more serious, and more prone to escalation? In our view, the current conflicts actually support our concept and vision that nuclear weapons do not provide security; in fact, they do the opposite.

However, there's a mainstream, historically rooted perspective on security that still dominates. It will take time to shift the debate and introduce this new perspective—one that considers security from different angles, including human security. We believe that if states, people, journalists, diplomats, and scholars delve more deeply into this concept, it will offer a clearer path forward, especially in regard to inhumane weapons and weapons of mass destruction like nuclear weapons.

Interviewer: Thank you. You mentioned that human security is the main focus of the TPNW. On one hand, the TPNW aims to prohibit nuclear weapons completely and make them illegal. However, states can still withdraw from the TPNW. The NPT has a loophole where states must submit a notice to the Security Council three months in advance. In the TPNW, the notice period is 12 months. Do you think—or does ICAN advocate—that withdrawal should be completely banned under the TPNW, or is allowing withdrawal under certain conditions necessary?

Interviewee: I'm not a specialist in international law, but I think every legal agreement needs to have a provision for withdrawal. I could be mistaken, but I believe that extending the time frame for withdrawal in the TPNW was a lesson learned from past processes, like those within the NPT. The 12-month period allows time for states to be informed and for discussions to take place, including attempts to convince states not to withdraw. So, the extension to 12 months is a positive aspect of the treaty.

As for the treaty's other provisions, ICAN is generally supportive of what has been included. I'm not entirely firm on the specifics of withdrawal conditions, but I do believe there needs to be a provision for it, and the 12-month notice seems appropriate.

Interviewer: Thank you. I've noted that although the TPNW has extended the withdrawal time from 3 to 12 months, there is also a special provision under which states cannot exit the treaty if they are at war. I've found this could be a significant obstacle for NATO states or the United States to sign and ratify the treaty, as it conflicts with the nuclear sharing arrangements.

Interviewee: Yes, but I think a state that still adheres to nuclear weapons doctrines and places nuclear weapons at the centre of its security strategy would not join the TPNW in the first place. So, I don't believe that the withdrawal provision is the main obstacle preventing nuclear-weapon states and NATO states from joining. If a state decides to pursue the path of a nuclear-weapon-free world and disarmament, it's likely committed to that path and wouldn't change course quickly, even if circumstances change, in my personal view.

Interviewer: What does the future of the TPNW look like, and how will ICAN advocate for greater efforts to universalize the TPNW and eventually achieve complete nuclear disarmament?

Interviewee: The focus now is on the Meetings of States Parties, which take place almost every year. These meetings are essential for strengthening the TPNW, especially in provisions like victim assistance. We're seeing an interesting development: certain states, even those not yet joining the TPNW, are participating as observer states. This includes some NATO states and nuclear weapon hosting states. They might not be full members, but they're engaging in working groups on topics like victim assistance. This is a promising development because it shows that the TPNW provides a space for cooperation and future discussions.

When comparing the TPNW's Meetings of States Parties to the NPT Review Conference process, we see that the TPNW offers a much better forum for open discussions on how to move forward. The NPT process has become somewhat stagnant; it's difficult to reach consensus on outcome documents, and many states just reiterate their long-standing positions. In contrast, the TPNW meetings allow for more open, creative discussions, and I believe this will generate new ideas and energy for nuclear disarmament in the coming years. It's from this process that we hope to develop the strategies that will eventually lead to global zero.

Interviewer: Thank you. So, the TPNW meetings have indeed provided a platform for states to discuss disarmament. But what other challenges do you see? Although there's a platform for states to discuss disarmament, what do you think are the other legal or logistical challenges in convincing states to join the TPNW and eventually give up their nuclear weapons?

Interviewee: The question is how we define legal obstacles. With Article 6 of the NPT, we already have a clear path forward for nuclear disarmament, and all nuclear-armed states have signed on to it. However, the challenge is that the NPT doesn't clearly outline how these states should proceed with disarmament. So, I'd say the obstacles aren't just about the TPNW but about nuclear disarmament in general.

One significant challenge is the position of nuclear-armed states regarding the modernization of their arsenals. They argue that this modernization is not an act of rearmament and is still allowed under the NPT. There needs to be a legal discussion about what their obligations are under Article 6 of the NPT. This is why the TPNW is so important: it helps to clarify and push forward the implementation of Article 6.

Another major obstacle is the perception of nuclear-armed states that modernization of their nuclear arsenals is acceptable, even though they claim to support a world free of nuclear weapons. In reality, they are not fulfilling their obligations under the NPT and are maintaining the status quo. This creates a proliferation risk because as long as nuclear weapons exist and nuclear-armed states do not disarm, other states may be tempted to leave the NPT and acquire nuclear weapons as well.

Interviewer: Thank you so much. I think I'm done with most of my questions. I do have one last question, though I'm not sure if it's within your expertise. Could you provide some insights into the diplomatic efforts and negotiations regarding North Korea's withdrawal from the NPT? What strategies might have prevented North Korea from withdrawing?

Interviewee: I'm afraid I'm not a specialist on the North Korean issue, but North Korea's case does highlight some of the broader challenges with the NPT. The NPT has had problems since the late 1990s, which is why many states pushed for a new process, culminating in the negotiation of the TPNW in 2017. North Korea's withdrawal shows that the NPT was not fully effective in preventing nuclear proliferation. Instead, it allowed another country to become a nuclear-armed state.

This situation underscores the inherent problems within the system built around nuclear weapons. Many states signed the NPT with the understanding that they would not develop nuclear weapons, while those that had them would disarm. However, when the core goal of the NPT is not pursued sincerely or in good faith, it creates ongoing problems, including the risk of nuclear proliferation.

Interviewer: Thank you. I've also studied the NATO nuclear sharing system and found that it gives unfair advantages to NATO countries. Recently, especially after the Russia-Ukraine war, Poland has shown a strong interest in hosting NATO nuclear weapons. What do you think about these geopolitical issues?

Interviewee: I agree that these geopolitical issues are significant. The Russia-Ukraine war demonstrates that the arguments in favour of nuclear weapons and NATO's nuclear sharing arrangements do not make conflicts safer or easier to manage. In fact, they complicate matters, making conflicts more dangerous and harder to resolve.

The NPT was a crucial step forward, but it was meant to evolve over time. In 1995, the NPT was extended indefinitely without resolving the core issues at its heart, such as the unequal distribution of nuclear weapons among states. NATO's nuclear sharing arrangements further complicate this, as it creates an unfair system where certain countries host or possess nuclear weapons, while others are prohibited from doing so.

Interviewer: Thank you so much for your insights.

Interviewee: You're welcome. It was a pleasure discussing these important issues with you.