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The Ban Treaty: Perspectives from Southeast Asia

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AN EXTRAORDINARY ACHIEVEMENT

The Treaty for the Prohibition of Nuclear Weapons (TPNW)¹ was adopted by the UN Conference at the United Nations General Assembly (UNGA) on 7 July 2017. After months of negotiations from its adoption by the UNGA, resolution A/C.1/71/L.42² to convene negotiations on a nuclear weapons ban on 27 October 2016, the Treaty was endorsed by 122 countries, with one vote against and one abstention. And while it was expected that the nine nuclear weapons states (NWS) and their allies were dead set in rejecting the Treaty, it was nonetheless hailed as a historic step towards a nuclear-free world.

Since its adoption, the TPNW— also referred to as the Ban Treaty has been the subject of intense debate among the policy and academic communities, and several civil society groups that have been advocating for the total elimination of nuclear weapons. The treaty is seen as an extraordinary achievement in establishing a new international norm, and one that Ramesh Thakur argues— “stigmatizes nuclear weapons and induces move toward disarmament.”³

¹ “UN, United Nations, UN Treaties, Treaties.” United Nations. United Nations, July 7, 2017. <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY>.

² General Assembly Resolution A/C.1/71/L.41, General and complete disarmament: taking forward multilateral nuclear disarmament negotiations (14 October 2016)

³ Ramesh Thakur. “Nuclear Norms and the UN Ban Treaty.” The Strategist, November 19, 2017.

<https://www.aspistrategist.org.au/nuclear-norms-and-the-un-ban-treaty/>.

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More significantly, for non-nuclear weapons states (NNWS), the TPNW opens another avenue to push ahead with the long drawn and often contentious efforts in preventing and eliminating nuclear weapons. How successful these efforts will be remains to be seen. To be sure, the TPNW has drawn a lot of controversies. While hard dissenters dismiss the goal of a nuclear-free world as a pipe-dream, there are also sceptics/critics that point to its duplicating the objectives of the Nuclear Non-Proliferation Treaty (NPT) and could in turn weaken and/or jeopardize 'progress' made in advancing the NPT. In 2017, the U.S. Assistant Secretary for International Security and Non-Proliferation, Christopher Ford, criticized the Treaty as "entirely unserious about real disarmament."⁴

The lists of objections and reservations to the TPNW are indeed long and are noteworthy. These include the risk of 'forum-shopping' where NNWS may decide to opt out of NPT in lieu of TPNW and rendering NPT subordinate to TPNW. Other analysts point to the substantive issues that impact on non-proliferation, such as the Treaty's lack of clarity on its legal obligations and insufficient measures on how to achieve the highest standards for disarmament verification. Of salience too is the concern among NNWS about delegitimizing nuclear deterrence. The TPNW effectively makes "threat of use" illegal. As pointed out by Tytti Erästö, for states that benefit from nuclear deterrence umbrella for their national security and strategic stability, the logic of nuclear deterrence trumps the normative imperatives of

⁴ Christopher Ford, George Perkovich. "Briefing on Nuclear Ban Treaty by NSC Senior Director Christopher Ford 2017." <https://carnegieendowment.org/2017/08/22/briefing-on-nuclear-ban-treaty-by-nsc-senior-director-christopher-ford-event-5675>.

TPNW.⁵ Last but not least, many still view the success of the TPNW as contingent on the support of the NWS, which, from the start, was not forthcoming.

TPNW IN THE ASIA-PACIFIC: MIXED RESPONSES

The goal of a nuclear-free world draws mixed responses in a region as diverse as the Asia-Pacific. Nine of the countries with nuclear weapons fall within the region's wide geographic footprint— U.S., Russia, China, India, Pakistan, and North Korea.

Yet, the region is also home to a large number of multilateral security frameworks and led remarkably by ASEAN— a ten-member grouping of small-medium states (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam). The other ASEAN-led institutions are the ASEAN Plus Three (APT) comprising the ten ASEAN states and plus three Northeast Asian states— China, Japan and South Korea; and the East Asia Summit (EAS) which brings the U.S., Russia, India, Australia and New Zealand with the ten ASEAN member states and the plus three states— China, Japan and South Korea. There is also the ASEAN Regional Forum (ARF)⁶ that brings together all the major powers in the world.

⁵ Tytti Erästö. "Fifty Years of the NPT-Cause for Celebration or Commemoration?" SIPRI, May 23, 2019. <https://www.sipri.org/commentary/blog/2019/fifty-years-npt-cause-celebration-or-commemoration>.

⁶ "Asean Regional Forum." Asean Regional Forum Dev. Accessed September 16, 2020. <http://aseanregionalforum.asean.org/>.

These regional frameworks are consequential to the diverging views on the prospects of the TPNW. The APT, EAS and the ARF were all established by ASEAN based on its own model of multi-lateral security cooperation that promotes comprehensive and cooperative security and founded on a wide-band of normative principles such as peaceful resolution of conflict and non-use of force, promotion of trust and confidence-building, and inclusiveness rather than exclusivity. While some ASEAN states are part of the U.S.-led military alliances that also include Japan, South Korea and Australia, Asia-Pacific's multilateral security architecture are largely underpinned by a strong set of norms and institutions that define inter-state relations.

The diversity of states that make up the Asia-Pacific, and the variable geometry in multilateral security arrangements explain the wide the variations in perspectives on the TPNW. Countries in the region that are part of the U.S. "hub and spokes" system and are part of the exclusive group of NWS expectedly voted against the Ban Treaty, while the rest, particularly the ASEAN states, were among the strongest advocates of the Treaty.

ASEAN'S SEANWFZ AND TPNW: DISARMAMENT MATTERS

As an important actor in Asia-Pacific's regional security architecture, ASEAN's perspectives on TPNW matter. ASEAN's pivotal role in convening these multilateral meetings and setting the agenda provides the critical platforms for policy dialogues and exchanges on issues of strategic, political and security importance, including nuclear security.

In 1995, ASEAN established a nuclear weapons free zone with the adoption of the

Southeast East Nuclear Weapons Free Zone (SEANWFZ), otherwise known as the Bangkok Treaty. As with other NWFZs, the SEANWFZ serves to advance and consolidate nuclear prohibition norms both at the regional level and global levels, while addressing special regional needs and conditions that may lead states to consider going for nuclear weapons and other weapons of mass destruction. It should be noted that Southeast Asia is one of the very few NWFZs in the world. The other NWFZs are the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga),⁷ Treaty on a Nuclear Weapon-Free-Zone in Central Asia,⁸ African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)⁹ and Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco).¹⁰

While ASEAN states regard the NPT as the core instrument for non-proliferation and disarmament, they share the same concerns that others have about the intractable challenges facing the NPT, 50 years since its adoption. The lack of progress of the NPT, specifically on Article VI, which obliges parties to pursue in "good faith" negotiations to disarm, has not

⁷ United Nations Office for Disarmament Affairs. "South Pacific Nuclear Free Zone Treaty." United Nations. Accessed September 16, 2020. <http://disarmament.un.org/treaties/t/rarotonga/text>.

⁸ "Treaty on a nuclear-weapon-free zone in Central Asia." Opened for signature on 8 September, 2006. Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations, no. 51633 (2014) <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/51633/Part/I-51633-08000028023b006.pdf>

⁹ "The African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)." Opened for signature on 11 April, 1996. Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations, no.11(1) (2009) <http://disarmament.un.org/treaties/t/pelindaba/text>

¹⁰ "Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)." Opened for signature on 14 February, 1967. Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations, No. 9068 (1968): <https://treaties.un.org/doc/Publication/UNTS/Volume%20634/volume-634-I-9068-English.pdf>

stopped NWS to possess nor prevented them from building nuclear weapons. The stalled NPT talks illustrate the growing disconnect between NWS and NNWS. Moreover, the postponement of the much-awaited Review Conference of the NPT scheduled in April 2020 due to the COVID-19 pandemic further dims prospects for containing nuclear proliferation and moving towards disarmament.

With the deep divisions on the implementation of the NPT, ASEAN has leaned on the SEANWFZ to promote the non-use and non-proliferation of nuclear weapons, since among others, the Treaty provides for a protocol of accession by the NWS. However, no NWS has signed the Protocol to the Treaty despite negotiation efforts since 2011. The NWS have expressed reservations over the provision on negative security assurances and the inclusion of the exclusive economic zones and continental shelves as stipulated in the SEANWFZ.

The adoption of TPNW was therefore a welcomed development for ASEAN as it regards the Treaty as providing the normative ballast to its SEANWFZ. To ASEAN states, the TPNW and SEANWFZ are mutually reinforcing, providing a seamless path towards realizing the vision of a nuclear-free world. To date, out of the ten ASEAN members, nine have signed the TPNW except Singapore which abstained,¹¹ and three members- Thailand, Vietnam and Laos have already ratified the new Treaty.

¹¹ See for the full report titled “Singapore’s Explanation of Vote on the ‘Treaty on the Prohibition of Nuclear Weapons’ at the First Committee, 74th UNGA, 4 November 2019” https://www.mfa.gov.sg/Overseas-Mission/New-York/Mission-Updates/First_committee/2019/12/Press_20191104.

A BROADER, STRONGER NWFZ

The Ban treaty can be seen as a logical extension of a more strengthened NWFZ - such as the SEANWFZ, due to similarities in the legal provisions and implications of the Treaty, as well as common themes in the language and goals. For example, the two treaties obliged signatory States not to develop, manufacture or otherwise acquire, possess or have control over nuclear weapons; station or transport nuclear weapons by any means; or test or use nuclear weapons. (See common provisions: SEANWFZ: Article 3 Basic Undertakings, and UN Nuclear Weapons Ban Treaty: Article 1 Prohibitions). Both treaties also encourage signatory States to conclude with IAEA a comprehensive safeguards agreement. (See common provisions: SEANWFZ: Article 5 IAEA Safeguards; and UN Nuclear Weapons Ban Treaty: Article 3 Safeguards). Finally, both treaties also recognize the inalienable right of every State to use nuclear energy for peaceful purposes.

For ASEAN states, TPNW reinforces the NPT and SEANWFZ. Their support for TPNW does not make the NPT any less important, and in fact shows that they continue to uphold the NPT as the cornerstone of global non-proliferation and disarmament regime. They also assert their right to use nuclear energy for peaceful uses and vow to strengthen their cooperation with the IAEA on safety, security and safeguards.

These sentiments are reflected in most of the official statements of ASEAN member states in support of the TPNW. Thailand,¹² for instance, notes the Ban Treaty's "significant contribution towards the shared goal of making our region and the world free of nuclear weapons...and [calling on] greater coherence and cooperation between States on intelligence sharing, capacity-building and assistance." For the Philippines,¹³ "the total elimination of nuclear weapons is the only absolute guarantee against their use or threat of use and continue to welcome all efforts leading to this end." Malaysia,¹⁴ in its recent remarks claims that, "we remain convinced that the TPNW complements existing instruments, in particular the NPT.

Hence, concerns that the TPNW would potentially contradict existing instruments, in our view, does not arise." While Indonesia,¹⁵ which was among the one of the 50 first signatory countries of TPNW in September 2018, sees "TPNW as a major stepping stone to achieve common goals in the complete elimination of nuclear weapons... calls on other countries and civil society groups to work together to accelerate entry into force and the universalization of TPNW."

¹² See for the full report titled "Permanent Mission of the Kingdom of Thailand to the United Nations at the General Debate of the First Committee" <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/10/statement-by-thailand-on-behalf-of-the-association-of-southeast-asian-nations-asean-.pdf>

¹³ See for the full report of statement delivered for ASEAN <http://statements.unmeetings.org/media/20304594/phil-behalf-asean-1stcomm-8oct.pdf>

¹⁴ See for the full report titled Permanent Mission of Malaysia to the United Nations (UN), New York https://www.kln.gov.my/web/usa_un-new-york/home/-/asset_publisher/ZJfQEzYEsqRQ/blog/statement-by-representative-of-malaysia-to-the-united-nations?inheritRedirect=false&redirect=https://www.kln.gov.my/web/usa_un-new-york/home_p_p_id=101_INSTANCE_ZJfQEzYEsqRQ&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=118_INSTANCE_G3AgBXs1G1Yv-column-1&p_p_col_count=1&_101_INSTANCE_ZJfQEzYEsqRQ_cur=2&_101_INSTANCE_ZJfQEzYEsqRQ

¹⁵ See for the full report titled Disarmament and Non-proliferation of Weapons of Mass Destruction https://kemlu.go.id/portal/en/read/90/halaman_list_lainnya/disar_mament-and-non-proliferation-of-weapons-of-mass-destruction

ADVANCING THE TPNW AND STRENGTHENING REGIONAL EFFORTS TO IMPLEMENT NPT

As a new norm, TPNW clearly needs to be socialized to garner more support and improve prospects for its institutionalization. Arguably, doing so could also help advance the implementation of the NPT given the complementarity and mutually constitutive elements in both treaties. New norms are mediated by agents or norm entrepreneurs in the sense that they give meaning and substance for these to be institutionalized. Absent a global consensus on TPNW, the acceptance of this new norm relies to a large extent on the kinds of "mediation" undertaken by a range of agents or norm entrepreneurs. In a highly diverse region, state actors like ASEAN, other ASEAN-led institutions and non-state actors from think tanks and civil society organizations carry out these functions.

At the state level, one would expect ASEAN, the EAS and ARF to move the processes of socialization of the TPNW forward through the various platforms that they convene. So far, regional discourses on TPNW are not pronounced. Most multilateral forums on nuclear security continue to focus more on NPT. One can argue however that continued attention to NPT provides pathways for finding traction for TPNW, given that most states see both treaties as not mutually exclusive and serve the same objectives of a nuclear-weapons free world. In this regard some developments are noteworthy.

In the ARF, discussions in its Inter-Sessional Meeting at Non-Proliferation and Disarmament (ISM on NPD) in 2019 focused on enhancing member states' collaboration on nuclear security and non-proliferation such as conducting of joint table top exercises on chemical, biological,

radiological and nuclear (CBRN) emergencies and exchange of good practices in export control measures. This meeting also facilitated a presentation from International Coalition Against Nuclear Weapons (ICAN) on the Ban treaty. Such meetings highlight ARF's potential role in universalizing the TPNW and mainstreaming it in the Asia-Pacific region.

As a leaders' led meeting, the EAS has become a strategic platform for NWS and NNWS in the region to discuss a number of key political-security issues including non-proliferation and nuclear security. The EAS Non-Proliferation statement of 2017¹⁶ encouraged further cooperation among EAS countries on non-proliferation related issues, including through capacity building and exchanging information, best practice and lessons learned. This was followed by the 2018 EAS Leaders' statement¹⁷ that highlighted the safety and security of nuclear and radioactive materials in the Asia-Pacific, reinforcing ASEAN's norms on nuclear safety and security.

Beyond regional and national declarations, the work done by ASEAN and its network of nuclear regulatory bodies, the ASEAN Network of Regulatory Bodies of Atomic Energy (ASEANTOM), in promoting more cooperation and having joint border exercises aimed at preventing the illicit possession and trafficking of nuclear/radioactive materials by non-state actors has been progressing. These efforts help

¹⁶ Click to see the full report titled "East Asia Summit Statement on Non-Proliferation" <https://asean.org/east-asia-summit-statement-on-non-proliferation-2/>

strengthen the non-proliferation and disarmament regimes by addressing the growing threats of malicious use of radiological materials by non-state actors.

Thus, while the prospects of a nuclear-free Asia-Pacific remain uncertain for as long as the big powers in the region are also NWS, these incremental efforts by ASEAN working with these NWS nonetheless form part of the building blocks in advancing the SEANFWZ, institutionalizing the NPT and promoting the TPNW.

Finally, while the TPNW sets the lofty ambition of a nuclear-free world, its emergence could not have been more timely given the kinds of disruptions and uncertainties confronting today's global security environment. In the Asia-Pacific, concerns about the breakdown of multilateralism and heightened geopolitical rivalries threaten regional peace and security. Moreover, climate change not only threatens human security but is also poised to worsen inter-state tensions due to resource scarcity. Against these challenges, the prohibition of nuclear weapons and WMDs becomes more compelling given the risks of using these weapons to resolve conflicts. In a post-COVID-19 world, there have been several lessons learnt, and a very salient one is that nuclear weapons are useless in fighting an existential global threat.

¹⁷ Click to see the full report titled "EAS Leaders' Statement on the Safe and Secure Use, Storage, and Transport of Nuclear and Other Radioactive Materials" <https://asean.org/eas-leaders-statement-safe-secure-use-storage-transport-nuclear-radioactive-materials/>

The Asia-Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament (APLN) is an advocacy group that aims to inform and energize public opinion, especially high-level policymakers, to take seriously the very real threat posed by nuclear weapons, and to do everything possible to achieve a world in which they are contained, diminished and eventually eliminated.