



## Harmonizing the NPT and Ban Treaty in Nuclear Risk Reduction Measures by Possessor States

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### Summary

*The international community has sought to address the challenges of nuclear risks that have existed since the beginning of the nuclear age by expressing abhorrence at the thought of nuclear weapons being used again. These efforts have ensured that the nuclear taboo has held and despite conflicts involving nuclear weapon states or their allies, nuclear weapons have not been used. With the return of inter-state strategic competition among major powers, technological developments and the shift of the geopolitical centre of gravity to the Indo-Pacific, the world is witnessing an age of nuclear asymmetry and a shift towards more usable nuclear weapons. Bilateral arms control no longer seems possible and among the multilateral instruments, the NPT has exhausted its normative potential while the NWPT is yet to gain the desired political legitimacy and authority. Today's challenge is to ensure that both co-exist, without one weakening the other while incremental steps are taken to maintain the nuclear taboo until such time as nuclear threats are indeed eliminated by all possessor states, including those not party to the NPT.*

1. In January, the Doomsday Clock was moved forward by thirty seconds. It now at two minutes to midnight, the point symbolizing nuclear annihilation. This decision was announced by the Science and Security Board of the *Bulletin of Atomic Scientists* on 25 January, citing a range of growing nuclear threats.<sup>1</sup> The last time it had been as close to midnight was in 1953, during the Cold War when both the US and USSR had demonstrated thermonuclear capability. More revealing is the fact that in 2010, the Doomsday Clock stood at six minutes to midnight but during the last eight years, has inexorably inched closer.

2. The Board highlighted that the resetting of the Doomsday Clock should be seen as an urgent warning that the world leaders need to address the growing nuclear danger (as well as the existential threat posed by climate change) because the risk that nuclear weapons may be used, either intentionally or on account of miscalculation, has risen during 2017. The Bulletin's Science and Stability Board are not alone in raising concerns about growing nuclear risks.

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<sup>1</sup> <https://thebulletin.org/press-release/it-now-2-minutes-midnight11464>.

3. Before venturing any further, it is necessary to re-state one fundamental truth that has been evident since the nuclear age dawned in 1945. Nuclear weapons are immensely destructive and any use would be catastrophic; as long as some countries retain these weapons, other countries will have a justification to acquire them for their security; as long as nuclear weapons exist, it is likely they will be used again; and therefore the only lasting guarantee against their use is global elimination.<sup>2</sup>

4. Since this axiom is not universally accepted, the international community is obliged to grapple with the second best option, namely, reducing the risk of use of nuclear weapons. This paper is divided into three parts – assessing the growing risks; previous experience of managing them; and finally, examining possible measures in the contemporary nuclear age.

### Growing Nuclear Risks

5. If the Cold War defined the first nuclear age, today we are living in a new nuclear age in which a range of both old and new threats co-exist. A nuclear exchange between the US and the USSR escalating into mutual annihilation was the dominant threat during the first nuclear age. This receded during the second nuclear age but has made a comeback. Global terrorism and proliferation were the primary risks during the second nuclear age. These have not diminished. In addition, however, new technological developments are blurring the dividing line between conventional and nuclear weapons and nuclear frontiers have expanded to outer space and cyberspace.

6. Nuclear risks today can be divided into four categories:

- Geopolitical rivalries have returned, raising the risk of pre-meditated nuclear exchange.
- Lack of communications between different nuclear rival states has raised the risks of escalation. In the absence of clear red lines, the firebreak between conventional and nuclear weapons is being eroded.
- The risk of miscalculation existed even during the first nuclear age and has been well documented.<sup>3</sup> Today, with compressed timelines and dependence on space based and cyber assets, which can be tampered with, the risks of a system malfunction, rogue launch and miscalculation are much higher.
- The risk of a global terrorist group acquiring a nuclear device has been partially addressed with improvements in nuclear security practices but it has not disappeared.

7. The US came out with a National Security Strategy in December 2017, followed by a National Defense Strategy and in February 2018, the Nuclear Posture Review (NPR). These documents highlight a return to inter-state strategic competition, identify Russia and China as revisionist rivals and also broaden the role of nuclear weapons in US national security strategy. Had the 2018 NPR been released earlier, it is possible that the Science and Security Board of the Bulletin may even have been compelled to move the Doomsday Clock closer than two minutes to midnight. The new NPR adds to concerns because it reverses a number of key principles from the previous NPRs commissioned by Presidents Bill Clinton (1994), George W Bush (2002) and Barack Obama (2010).

8. The most significant is a reversal of the assessment that since the end of the Cold War, the US no longer faced the threat of extinction from Soviet nuclear weapons and was there-

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<sup>2</sup> This was most elegantly expressed in the Canberra Commission. See *Report of the Canberra Commission on the Elimination of Nuclear Weapons* (Canberra: Department of Foreign Affairs and Trade, 1996), pp. 18–22.

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<sup>3</sup> <https://www.ucsusa.org/sites/default/files/attach/2018/02/Close%20Calls%20with%20Nuclear%20Weapons.pdf>

fore able to reduce the role of nuclear weapons in its security calculus. The 2018 NPR declares that global threat conditions have worsened, “including increasingly explicit threats from potential adversaries.”<sup>4</sup> Another development has been President Donald Trump’s decision that the US be ready to conduct a nuclear test at short notice, within six months of a decision.<sup>5</sup> Consequently, a thirty-year modernization plan has been announced with a price tag of \$1.2 trillion that could rise to as much as \$1.7 trillion.

9. The US is not the only one thinking of modernization though details of programs of other states that have nuclear weapons are less explicit. After the 1999 Kosovo war, Russia began to reconsider its approach to nuclear weapons because of technological asymmetry vis-a-vis US conventional capabilities. This led to the evolution of “escalate to de-escalate” doctrine,<sup>6</sup> indicating an increased reliance on nuclear weapons (escalation) with a view to bringing about a resolution of the dispute (de-escalation) on terms favourable to Russia. Subsequently, Russia began to modernize its nuclear arsenal while also undertaking improvements in its conventional capabilities. In a speech to the Russian parliament on 1 March, President Vladimir Putin talked of five new weapons systems that can evade US interception capabilities.<sup>7</sup>

10. China too is undertaking a nuclear modernization but geared more to ensuring mobility and survivability for its land based forces, stealth capability for its bomber aircraft, quieter submarines and replacing liquid fuelled missiles by solid fuelled engines. China claims that its modernization is intended to ensure its second strike capabilities.

11. India is making steady progress towards operationalizing its triad of land, sea and air-based platforms. In graduating to “full spectrum deterrence” with the introduction of tactical nuclear weapons, Pakistan has the fastest growing nuclear weapons program. Another source of growing risk is the increasingly shrill rhetoric between the leaders of the US and the Democratic People’s Republic of Korea (DPRK or North Korea).<sup>8</sup> Trump has also put the nuclear deal with Iran – the Joint Comprehensive Plan of Action (JCPOA) – on notice, unless it is tightened to cover other activity such as missile testing and regional behaviour.

### Experience of Managing Risks

12. The international community has sought to manage nuclear risks since 1945. Though disarmament was the stated objective of many of the initiatives taken, it has not eliminated nuclear weapons. Nevertheless, the nuclear taboo has stood since 1945, whether because of human wisdom or sheer good luck, or a combination of both.

13. One key element of nuclear management has been arms control. The US and USSR (now Russia) have traditionally accounted for over 90 percent of global nuclear stockpiles which peaked in the 1980s at 65,000. Today, global stockpiles have come down to nearly 15,000 warheads, of which the US and Russia account for 13,800. The UK, France and China have between 200 and 300 each, India and Pakistan 100 and 130 each, Israel fewer than 100 and North Korea could possess between 10 and 60 devices. So while the number of states possessing nuclear weapons has gone up to nine, the global stockpile has come down to a fourth from the peak in 1980s. The bilateral arms control process, responsible for the dramatic reduction in ‘global’ stockpiles, has however ground to a halt.

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<sup>4</sup> <https://media.defense.gov/2018/Feb/02/2001872886/-1/-1/1/2018-NUCLEAR-POSTURE-REVIEW-FINAL-REPORT.PDF>.

<sup>5</sup> <http://time.com/5128394/donald-trump-nuclear-poker/>.

<sup>6</sup> <https://thebulletin.org/why-russia-calls-limited-nuclear-strike-de-escalation>.

<sup>7</sup> <http://en.kremlin.ru/events/president/news/56957>.

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<sup>8</sup> The recently announced summit between Donald Trump and Kim Jong-un, to be held by the end of May, could wind back the harsh rhetoric and the tensions. On the other hand it might yet be cancelled or, if it is held, collapse in failure and pave the way for military strikes.

14. Complementing the bilateral arms control track were multilateral negotiations with the stated aim of nuclear disarmament. The United Nations was created in 1945 and the very first resolution<sup>9</sup> adopted by the General Assembly on 24 January 1946 declared that atomic energy should be used only for peaceful purposes and atomic weapons should be eliminated. Though the UN has been unsuccessful in registering progress towards this objective, it remains the global platform for reminding the international community about the persisting challenge.

15. The Nuclear Non-Proliferation Treaty (NPT),<sup>10</sup> negotiated in the mid-1960s and opened for signature on 1 July 1968 is the most widely adhered to arms control treaty with 190 states parties. India, Pakistan and Israel never joined it while DPRK withdrew from the NPT in 2003. The four are nuclear-armed states, unlikely to disarm unilaterally to join the NPT that acknowledges only five countries<sup>11</sup> as nuclear weapon states (NWS) as they exploded a nuclear explosive device before 1 January 1967. In other words the definition of a NWS is chronological – when the first test was conducted – and not empirical – possession of the bomb. This has created a strategic disjuncture between legal fiction and ‘facts on the ground’. The other remaining non-party, South Sudan, has recently emerged as an independent state and may well accede to the NPT soon.

16. Article VI of the NPT obliges all parties to pursue negotiations “in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” These negotiations never happened and even some of the most die-hard loyalists of the NPT must

acknowledge that these are unlikely. Article VI is therefore destined to remain an unfulfilled obligation.

17. During discussions at the five yearly NPT review conferences, the US and Russia point to the reductions in their nuclear arsenals undertaken bilaterally as proof of their good intentions while the other three NWS party to the NPT (UK, France and China) reaffirm their commitment to join the process once the US and Russian arsenals come down to levels comparable to theirs.

18. The NPT had a 25-year life, after which the NPT parties were to decide “whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods.” At the 1995 conference, the NPT was extended indefinitely and unconditionally. Complementing this were other decisions relating to future treaties banning nuclear tests (Comprehensive Test Ban Treaty – CTBT), production of fissile materials (Fissile Material Cut-off Treaty – FMCT), strengthening of the NPT review process and establishing a zone free of nuclear and other weapons of mass destruction (WMD) and their delivery systems in the Middle East.

19. A CTBT was negotiated and in 1996, opened for signature but has yet to enter into force. To do so it needs 44 countries (specified in the Annex 2 of the Treaty) to sign and ratify it, but eight out of the 44 countries have not done so. Of these, five are signatories (China, Egypt, Iran, Israel and the US) and the other three (DPRK, India and Pakistan) have not signed it. Given the Trump administration’s decision to increase readiness levels to be able to resume testing at Nevada, continued testing by DPRK, and growing tensions in the Middle East, it is highly unlikely that the CTBT will ever enter into force with the existing provisions of Article 14 relating to Entry into Force. The other elements (FMCT, strengthened NPT review process, and a WMD-Free Zone in the Middle East) have met the same fate as the Article VI obligation pertaining to nuclear disarmament in the NPT.

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[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/1\(I\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1(I)).

<sup>10</sup> <http://disarmament.un.org/treaties/t/npt/text>.

<sup>11</sup> USA, USSR, UK, France, China (N5) who also are the P5, the five permanent members of the UN Security Council.

20. Reducing nuclear risks by establishing nuclear-weapon-free zones (NWFZs) has been tried where agreements among the states of the region were feasible. This enables the geographical delimitation of the zone within which developing, testing, stationing, storing, and use of nuclear weapons are prohibited. The N5 undertake to respect the decision by signing a protocol. Currently, there are five such zones in existence covering Latin America and the Caribbean, Southeast Asia, Africa, the South Pacific and Central Asia. In addition, in 2000, Mongolia declared itself to be an NWFZ unilaterally. The NWFZ approach can't go any further given that North America, Europe, Northeast Asia, South Asia and the Middle East are host to nuclear weapons.

21. Negative security assurances (NSAs) are a unilateral declaratory guarantee by a NWS that it will not use or threaten to use nuclear weapons against a state that does not have nuclear weapons. These are a complement to positive security assurances – that oblige a country to come to the assistance of its military allies. During the Cold War NSAs were seen as an important assurance to non-aligned, non-NWS to encourage them to adhere to the NPT. Attempts to convert these into a negotiated legally binding treaty obligation in the Conference on Disarmament (CD) have failed.

22. The optimism that the end of the Cold War might lead to decisive steps towards nuclear disarmament soon evaporated and catalyzed the humanitarian approach beginning with the reference to the International Court of Justice (ICJ) in 1990s. The 1996 ICJ opinion failed to impart any momentum and in 2012, there was a renewed push towards mobilizing support for nuclear disarmament on the basis of a shared global concern arising out of the humanitarian consequences of nuclear weapons use. This led to negotiations last year in a multilateral conference convened under the aegis of the UN, resulting in the Treaty on the Prohibition of Nuclear Weapons (NWPT).

23. The NWPT was opened for signature on 20 September 2017 and to date, 57 countries have

signed and five have ratified it.<sup>12</sup> It will enter into force with 50 ratifications. The treaty prohibits the development, testing, production, possession, use and threat of use and stationing of nuclear weapons by a state party. So far only countries that do not have nuclear weapons and are not part of a military alliance with a NWS have signed on to the treaty. Supporters of the NWPT claim that the normative impact will gradually take hold and delegitimize nuclear weapons. Since these countries are also parties to the NPT, they maintain that it complements the NPT.

24. It is too early to judge the impact of the NWPT in terms of whether it will succeed in reducing the risks of nuclear use, given that all nine states possessing nuclear weapons have rejected it. The N5 members of the NPT have cautioned (in varying degrees) that the NWPT should not weaken the NPT. This is the first new development in the nuclear field which has the potential to significantly change the security calculus and demolish the myths that have come to surround nuclear weapons and deterrence theories. And this is why the NWS do not like the NWPT. There are tensions between the NPT and the NWPT and depending on how these tensions are handled, there are three possible scenarios in which this can play out.

25. One scenario is that either the 122 states that have supported the NWPT capitulate and revert to the status quo ante. This means that the ratification process slows down and the entry into force of the NWPT gets progressively delayed. Alternatively, the NWS can have an epiphany and decide to accept the NWPT. However, both are unlikely outcomes because the 122 NWPT supporting states have sufficient numbers to maintain the political momentum and an epiphany is unlikely.

26. Another scenario is about a growing shrillness in the debates between the NWS and the

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<sup>12</sup> <http://www.icanw.org/status-of-the-treaty-on-the-prohibition-of-nuclear-weapons/>.

122 NWPT supporting states, particularly in the run up to the NPT PrepCom meetings leading to the 2020 Review Conference. The NWS would keep the focus on non-proliferation while the 122 countries, all of whom are NPT parties in good standing, would highlight the growing nuclear risks. What would such a face-off imply for the NPT? More specifically, how credible and serious is the risk of mass defection from the NPT by an increasingly alienated cohort of states who come to believe, as has been suggested, that with the continuing failure to disarm by the NWS, mass defection would not only be legally correct but also the ethically responsible course of action?<sup>13</sup>

27. A third scenario would be to acknowledge the limitations of the NPT in addressing the risks facing the international community today while emphasizing that the NPT has been largely, although not totally, successful in curbing proliferation. The twofold political challenge is (1) to retain the non-proliferation regime of the NPT while building up the moral authority of the NWPT, and (2) to bring the non-NPT possessor states inside the nuclear restraint regime tent. This requires a new approach which eschews moral censure and finger-pointing by and at the NWS, the NWPT supporters, and the non-NPT nuclear-armed states; helps reduce nuclear risk; and at the same time, strengthens the taboo against nuclear weapons use that has held since 1945.

### Learning the Right Lessons

28. How far can these diplomatic and political instruments, that evolved over seven decades, serve the purpose of ensuring nuclear stability and maintaining the taboo against nuclear use in the new nuclear age? This merits an appreciation of the shift in the strategic landscape.

29. During the first nuclear age, the Cold War dynamic dictated that strategic stability depended upon nuclear stability between the US

and USSR. As strategic thinkers in both countries tried to analyze nuclear stability even as a nuclear race was underway, three key concepts emerged – deterrence stability, arms race stability and crisis management stability. Underlying it was the acceptance of mutual vulnerability, which provided the impulse for cooperative management of nuclear rivalry. The acceptance of mutual vulnerability was reflected in the Anti-Ballistic Missiles (ABM) Treaty concluded in 1972 (from which the US unilaterally withdrew in 2002) that limited the deployment of anti-ballistic-missile systems by both countries, reinforcing deterrence stability.

30. Other arms control agreements negotiated during the Cold War (SALT I & II, START I & II, INF Treaty) imposed limits in terms of launchers and warheads and imparted stability to the nuclear arms race. The Cuban Missile Crisis in 1962 led to the establishment of the Hot Line between Washington and Moscow and this was expanded further into Nuclear Risk Reduction Centres on both sides together with early warning systems to ensure crisis management stability. However, notwithstanding such measures, there were a number of near accidents with risks of both miscalculation and escalation.<sup>14</sup>

31. Today, the idea of cooperative management is under question. The ABM Treaty is dead; the US considers Russia to be in violation of the INF Treaty; and, given recent statements, it is unlikely that the New START will be extended beyond 2021. There are no nuclear stability dialogues between other potential adversaries, US–China, US–DPRK, India–Pakistan, India–China, Russia–NATO, even as the countries proceed with their respective nuclear programs.

32. With the geopolitical centre of gravity shifting from Euro–Atlantic to the Indo–Pacific, nuclear stability needs re-defining. While the US

<sup>13</sup> See Thomas E. Doyle, "The Moral Implications of the Subversion of the Nonproliferation Treaty Regime," *Ethics & Global Politics* 2 (2009), pp. 131–53.

<sup>14</sup> <https://www.npr.org/2014/08/11/339131421/nuclear-command-and-control-a-history-of-false-alarms-and-near-catastrophes>.

Russia equation remains important, other equations have grown in salience. Most significantly, these equations are not limited to nuclear dyads (as was the case with the US–USSR equation) but involve strategic chains with inter-linkages. The US–DPRK equation can be extended to include China and even possibly Russia. Similarly, the India–Pakistan nuclear equation cannot ignore the China factor. The US–China equation could also bring in Russia. Many of these trigger points lie in a crowded geopolitical arena skirted by the Indian and Pacific oceans. Given the absence of security structures and dialogue platforms, nuclear risks are clearly on the rise.

33. Clearly, the deterrence equations underpinning the US–USSR dyad during the Cold War are not applicable to stability in nuclear chain relationships, raising the risks of escalation, miscalculation and deliberate use, and the cascading effects of a crisis from one dyad across the entire nuclear chain. Furthermore, these deterrence equations evolved in an exclusively bilateral context where response times were determined by the distance separating the US and USSR. The timelines among many of the potential adversaries today are much shorter. In a situation where potential adversaries reflect asymmetries in terms of their doctrines and arsenals, the hypotheses and lessons of the Cold War become less relevant and demand a renewed realization that any nuclear use would very quickly snowball into unmanageable escalation spiral. Furthermore, the asymmetry implies that the bean-counting approach that led to parity in terms of the numbers of launchers and warheads between the US and USSR arms control agreements no longer works for nuclear chains.

34. Nuclear stability can no longer be isolated from developments in both outer space and cyberspace. So far, the regime for outer space is governed by the Outer Space Treaty of 1967 though growing space dependency has tempted major powers to develop capabilities that can militarize outer space. Attempts to build upon the 1967 treaty have stalled, both in the

CD in Geneva and in the Committee on Peaceful Uses of Outer Space in Vienna.

35. Cyber-dependence has grown rapidly and offensive cyber operations will be an integral part of any future conflict. If the conflict involves NWS, it may lead to potential interference in nuclear command and control functions which would only increase risks of miscalculation. Nuclear war gaming as an exercise was always fraught with uncertainties but with these technological developments, the high unpredictability levels render them meaningless.

36. In hindsight, it is clear that the bilateral arms control negotiations created a semblance of nuclear stability during the Cold War but did not reduce dependence on nuclear weapons; on the contrary these agreements served to heighten the role of nuclear weapons in the security calculus of the US and USSR. And since the two military superpowers couldn't do without nuclear weapons, it increased their desirability for other states thus highlighting the inherent tension between "arms control" and "disarmament."

37. Likewise, multilateral arms control attempts failed to achieve even a modicum of nuclear disarmament. The NPT delegitimized nuclear proliferation but failed to do the same for nuclear weapons, thereby effectively enabling the continued possession of the bomb by the five NWS. By the time the 1995 decision to extend the NPT was taken, the five permanent members of the UN Security Council were parties to the NPT. Instead of considering the Article VI obligations as a special responsibility, these five countries converted the NPT into a certificate of legitimacy for their continued retention of nuclear weapons. Thus if we unpack the obligations of Article VI (see paragraph 16 above), the NWPT is an implicit rejection of the claim that the NWS have pursued nuclear disarmament negotiations "in good faith" and for "effective measures," in order to bring about "cessation of the nuclear arms race at an early date."

38. In any event, today there are four countries with nuclear weapons (DPRK, India, Israel and Pakistan) which are not parties to the NPT. Having reached its limit in terms of adherence, the NPT has exhausted its normative potential<sup>15</sup> and is now a victim of its success. In other words the treaty and the regime surrounding the treaty undoubtedly deserve credit for fairly major achievements. For this reason certainly it should be maintained and not weakened in any way. But its limitations too must be accepted in terms of a political reality for future progress on the common agenda of avoiding a nuclear war and minimizing the risks associated with nuclear weapons.

39. The NPT community often seeks to make a distinction between the N5 as legally recognized or licit NWS, oblivious to the political reality that all nine NWS need to work together if nuclear risks have to be diminished. If functioning nuclear risk reduction and other restraint regimes are to be established, they will require buy-in by all possessor states who must be persuaded that the arrangements are in their individual and collective interest.

40. In the post-Cold War era, proliferation became the key threat. Apprehensions were heightened with the break-up of USSR and the challenge of denuclearizing Belarus, Kazakhstan and Ukraine, three new countries that had inherited significant nuclear weapons capabilities. Iraq and DPRK were found to be cheating on the nuclear safeguards system. Responses to these challenges included the push towards ensuring wider adherence and indefinite extension of the NPT, introduction of strengthened safeguards which applied to the non-NWS that were already subject to full-scope safe-

guards, and an expansion of export controls to cover dual use material, equipment, technologies and 'intangibles'.

41. After the 9/11 terrorist attacks on the US, the threat of terrorists acquiring nuclear weapons (or other WMD) gained salience. The UN Security Council adopted Resolution 1540 which obliged all countries to tighten measures in this regard.<sup>16</sup> The UNSC also set up monitoring mechanisms. President Obama's initiative on nuclear security also reflected this concern. Obama did think about other measures to wean the US off its dependence on nuclear weapons but faced domestic resistance that he could not overcome.

42. Increasingly frustrated with the lack of progress on nuclear disarmament under the NPT, and buoyed by the successful example of the campaign against landmines which brought together civil society and a coalition of like-minded countries, the humanitarian initiative for a nuclear ban convention took shape, resulting in the NWPT. As noted above, since the supporting states of the NWPT are parties to the NPT, they naturally see the NWPT as complementary to the NPT. According to them, the normative approach compensates for the lack of specificity in Article VI of the NPT ('closing the legal gap') and as the moral norm gains ascendancy, it will create the legal space for negotiating a full-fledged Nuclear Weapons Convention with credible enforcement and verification (like the Chemical Weapons Convention).

43. One flaw in this reasoning is that it ignores the inconsistency between the NPT and NWPT which arises from the manner in which the NPT has been reinterpreted by the P5 as merely a non-proliferation norm. Thus in its only reference to the NWPT, the US 2018 NPR insists that the Ban Treaty "has polarized the international community and seeks to inject disarmament issues into nonproliferation fora,

<sup>15</sup> In so arguing, Ramesh Thakur notes that the non-proliferation obligations have been universalized to all non-possessor countries (other than South Sudan as a new state); the nuclear security agenda was taken over by the Nuclear Security Summit process; and the disarmament obligation has been ignored. Ramesh Thakur, "The Nuclear Ban Treaty: Recasting a Normative Framework for Disarmament," *The Washington Quarterly* 40:4 (Winter 2018), p. 72. Of course, should elements of a nuclear restraint regime be adopted by the NWS pursuant to their Article VI obligation, the NPT's normative potential will be resurrected.

<sup>16</sup> S/RES/1540, 28 April 2004, <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2016/01/1540-fact-sheet-jan2016.pdf>.



potentially damaging the nonproliferation regime.”<sup>17</sup> The flip side of this is expressed by Nick Ritchie who believes that the nuclear discourse of the NWS “moves easily from” the position that the NPT permits them to possess and deploy nuclear weapons, “to the language of entitlement, legal rights and enduring legitimacy.”<sup>18</sup> This reinterpretation, which hitherto the non-NWS have not seriously challenged, has led the P5 states to legitimize their nuclear weapons and weaken the disarmament norm.

44. The NWFZ approach has run its course. Positive security assurances provide the nuclear umbrella to 29 states allied to the US.<sup>19</sup> Some even host US nuclear weapons on their territory.<sup>20</sup> These 29 countries are party to the NPT as non-NWS. Russia also says that a nuclear attack on any of Moscow’s allies would be regarded as an attack on Russia itself and draw an immediate response – but has not clarified which countries are covered by that commitment.

45. NSAs are a counter to positive security assurances. Whatever their security value, NSAs do nothing to diminish the legitimacy of nuclear weapons. Another major limitation of NSAs is that these are unilateral gestures rather than legally binding obligations.

46. All measures adopted so far, with the sole exception of the NWPT, are thus in lieu of and independent of nuclear disarmament. This was best captured in the statement issued by the US, UK and France last year stating that “accession to the ban treaty is incompatible with the policy of nuclear deterrence” and further, prevailing security concerns “continue to make nuclear deterrence necessary.”<sup>21</sup> Nuclear deterrence

has been further legitimized by the myth that it has helped maintain peace since 1945.

47. Meanwhile, are there incremental steps consistent with the objectives of nuclear disarmament and the NWPT? To be credible these should shift away from legitimizing nuclear weapons and deterrence. There are two possible approaches, one doctrinal and the other technical.

48. The first is the policy of no-first-use or not being the first to use nuclear weapons. In other words, nuclear weapons would be used only for retaliatory purposes. This diminishes the role of nuclear weapons. Currently, China maintains a no-first-use policy; India too has a no-first-use policy but reserves the right to retaliate using nuclear weapons in case of an attack on India or Indian forces anywhere with chemical or biological weapons. Other NWS maintain a first-use policy which implies a greater role for nuclear weapons.

49. The second related technical measure is alerting or increasing the lead time between the decision to use a nuclear weapon and the time that it takes to implement the nuclear strike. Countries that have a first-use policy consider it necessary to maintain at least a portion of their arsenals on high alert. In some countries, the authority for launching a nuclear strike is highly centralized, an issue that has become the subject of debate and discussion in the US. It is widely accepted that a crisis creates pressures on decision making, generating emotions and creating ‘the fog of war’, overwhelming rationality and reason.

50. Compressed timeframes push decision makers towards a ‘use’ decision. As many as 400 missiles could be launched from their underground silos in less than five minutes after an order given by the US president.<sup>22</sup> The idea of a hair-trigger alert status was deemed necessary to enhance the credibility of the deter-

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<https://media.defense.gov/2018/Feb/02/2001872886/-1/-1/1/2018-NUCLEAR-POSTURE-REVIEW-FINAL-REPORT.PDF>, p. 72.

<sup>18</sup> Quoted in Thakur, “The Nuclear Ban Treaty,” p. 85.

<sup>19</sup> Albania, Australia, Bulgaria, Canada, Croatia, Czech, Denmark, Estonia, Greece, Hungary, Iceland, Japan, Latvia, Lithuania, Luxembourg, Montenegro, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain.

<sup>20</sup> Belgium, Germany, Italy, Netherlands, Turkey.

<sup>21</sup> <https://usun.state.gov/remarks/7892>.

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<sup>22</sup> <https://www.scientificamerican.com/article/no-one-should-have-sole-authority-to-launch-a-nuclear-attack/>.

rent. Taking weapons off high alert provides additional time for decision making. Separating warheads from launch vectors would introduce an invaluable time delay. Raising alert levels would become an outcome of deliberations at each level of alert. Such an approach permits a lengthening of the fuse. It does not require a no-first-use policy as a pre-condition though the two together have mutually reinforcing beneficial impact.

51. Neither of these two incremental measures eliminates nuclear weapons but both help in lowering the nuclear risks that are on the rise today. Most importantly, these help in prolonging the nuclear taboo that has held since 1945 but seems to be under threat today. Prolonging the nuclear taboo is vital for delegitimizing nuclear weapons because any use today, especially pre-meditated use, would have catastrophic consequences. It could either lead to annihilation or, by eroding the taboo, make nuclear weapons an acceptable war-fighting weapon.

52. Moving back the Doomsday Clock is a collective responsibility. We may have maintained nuclear peace since 1945 but it has been a tenuous and a fragile peace. For too long, we have been misled into believing that arms control and non-proliferation approaches could lead to nuclear elimination. Whatever their other virtues, it is clear that these will not lead to nuclear disarmament. Accepting this reality is critical in order to make the right choices for our shared future.

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### APLN Policy Briefs

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### APLN and Toda Peace Institute

The **Asia Pacific Leadership Network (APLN)** comprises around ninety former senior political, diplomatic, military and other opinion leaders from sixteen countries around the region, including nuclear-weapons possessing states China, India and Pakistan. The objective of the group, founded by former Australian Foreign Minister and President Emeritus of the International Crisis Group Gareth Evans, is to inform and energize public opinion, and especially high level policy-makers, to take seriously the very real threats posed by nuclear weapons, and do everything possible to achieve a world in which they are contained, diminished and ultimately eliminated. The co-Convenors are Professors Chung-in Moon and Ramesh Thakur. The Secretariat is located at the East Asia Foundation in Seoul, Republic of Korea. See further [www.a-pln.org](http://www.a-pln.org).

The **Toda Peace Institute** is an independent, nonpartisan institute committed to advancing a more just and peaceful world through policy-oriented peace research and practice. The Institute commissions evidence-based research, convenes multi-track and multi-disciplinary problem-solving workshops and seminars, and promotes dialogue across ethnic, cultural, religious and political divides. It catalyzes practical, policy-oriented conversations between theoretical experts, practitioners, policymakers and civil society leaders in order to discern innovative and creative solutions to the major problems confronting the world in the twenty-first century (see [www.toda.org](http://www.toda.org) for more information).

APLN and the Toda Peace Institute are publishing a series of Policy Briefs together in a partnership on a project entitled "Bridging the Gap: Harmonizing the NPT and Ban Treaties." The objective of the project is to link global efforts to protect and strengthen international mechanisms for advancing nuclear non-proliferation and disarmament by harnessing the NPT and the Ban Treaty. A key will be to identify ways to improve cooperation between the 122 countries that voted to adopt the Ban Treaty on the one hand and, on the other, the nuclear-armed states and allies under the nuclear umbrella in the North Atlantic and the Asia Pacific.

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