I wish to provide some thoughts on the role of the Treaty on the Prohibition of Nuclear Weapons (TPNW) and its possible impact on both non-proliferation and disarmament prospects. Firstly, I believe any suggestions that the TPNW may undermine existing non-proliferation are false and themselves contribute to the growing ineffectiveness of nuclear disarmament progress, and secondly, the TPNW can influence disarmament efforts by reshaping the perception of nuclear security policies that exist today, thereby offering a new approach in addressing nuclear disarmament stagnation.

With regards to non-proliferation efforts, statements of the nuclear-armed states suggest that the TPNW fails to meet the highest standard of non-proliferation objectives. Furthermore, nuclear-armed states and their allies suggest that the TPNW detracts from the NPT regime more broadly and risks undermining its benefits and the safeguards and obligations that have been in place for nearly 50 years. In addition, these states also claim that the TPNW fails to take into account the realities of modern security threats of today’s world and would not effectively contribute towards disarmament efforts.

However, the TPNW clearly demonstrates the continued commitment by non-nuclear weapon states towards existing NPT obligations under Article II, not to ‘receive the transfer’ of nuclear weapons or ‘not to manufacture or acquire nuclear weapons or other nuclear explosive devices’. In this sense, the Article 1 prohibitions of the TPNW reinforce Article II NPT by prohibiting nuclear weapon possession and use, clearly reinforcing existing non-proliferation efforts in conjunction with the NPT.

In addition, it is evident that the TPNW was never intended to replace the NPT regime. Instead, I believe it should be viewed in a similar manner to the Comprehensive Test-Ban Treaty (CTBT), which acts as a supplement to reinforce the objectives contained under the NPT. Article 18 ensures this by explicitly noting that the Treaty ‘shall not prejudice obligations by State Parties with regards to existing international agreements... where those

1 See ‘P5 Joint Statement on the Treaty on the Non-Proliferation of Nuclear Weapons’, 24 October 2018
obligations are consistent with the Treaty’. Furthermore, the TPNW preamble reaffirms the importance of the NPT ‘as the cornerstone of the nuclear disarmament and non-proliferation regime’. The TPNW clearly suggests a continued role of the NPT alongside the TPNW to reinforce its objectives in today’s world.

5. Consequently, if the TPNW enters into force, the states which ratify the new treaty remain bound by existing obligations contained under the NPT regime, while also actively promoting a new mechanism which is viewed as a step towards nuclear disarmament in conjunction with Article VI NPT. Suggesting that the TPNW may undermine such efforts seem difficult to support at this time, as prohibiting nuclear weapons in their totality seems *prima facie* compatible with preventing the spread of nuclear weapons both horizontally amongst states, but also vertically within states.

6. With regards to the impact that the TPNW may have on disarmament efforts, it is first necessary to emphasis that existing international agreements have yielded little success and are under increasing strain. Although the five nuclear-weapon states under the NPT remain bound by the Article VI obligations to ‘pursue negotiations in good faith on effect measures towards the cessation of the nuclear arms race... and to nuclear disarmament’, it is clear this has not been realised. The CTBT has been in a state of impasse for over 20 years, and its highly burdensome entry into force requirements are unlikely to be met any time soon. Similarly, proposals of a fissile material cut-off treaty have been considered a step towards disarmament in both the 2000 and 2010 NPT Review Conference Final Documents, but negotiations towards this have yet to begin.

7. More worryingly is the recent interest shown towards modernisation policies, by updating and upgrading existing nuclear stockpiles. Most evident are the renewal of the Trident nuclear weapons programme for at least the next 40 years, and the increasing development of smart, lower-yield nuclear devices deemed more ‘usable’ for military purposes. This shows an underlying preference for maintain nuclear deterrents due to

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their perceived security benefits. Although Article VI does not establish a specific timeframe for disarmament, it is questionable whether such long-term modernisation and reliability improvements can constitute good faith measures towards disarmament.

8. We are also approaching a period in which bilateral nuclear limitation agreements are under significant threat. With the US showing an intention to withdraw from the INF Treaty based upon reported Russian breach of the agreement, currently New START would remain the only bilateral arrangement between the two nuclear superpowers. Yet even this agreement is due to expire in 2021, and based on current trends in relations between the US and Russia, the possibility of New START being renewed seems less likely at this stage. When left to the nuclear-armed states, the prospect of further nuclear reduction look bleak, and ongoing modernisation efforts noted previously may in fact show the beginning of a new nuclear arms race in contrast to Article 6 NPT obligations.

9. Given this stagnation and lack of progress, can the TPNW facilitate any change in disarmament prospects? An underlying initial challenge remains the absence of nuclear-armed state and nuclear umbrella state engagement in the negotiations of the treaty itself. The prohibition and disarmament of nuclear weapons is most prominently applicable to the 9 nuclear-armed states who are the primary targets of the treaty’s objectives. However, apart from the Netherlands, all nuclear-armed states, along with military allied states boycotted the negotiations. Due to the consensual nature of international law, the TPNW obligations will not bind states who are not party to the treaty. As such, the absence of involvement and stark opposition to the TPNW provides an initial limitation to its possible impact as a collective restatement of opposition, imposing legal consequences for its member states.

10. Yet the TPNW is not void of purpose due to this. Entry into force of the TPNW can maintain and even increase the pressure on the nuclear-armed states to negotiate more productively towards effective measures on nuclear disarmament, and may possibly renew efforts towards the start of fissile material cut-off negotiations, possible further ratification of the CTBT, or the development of a Middle Eastern Nuclear Weapon Free-Zone.

3 Vienna Convention on the Law of Treaties, Art 26, ‘Every treaty in force is binding upon the parties to it and must be performed in good faith’, reiterating the notion of pacta sunt servanda (emphasis added).
Even if the TPNW does not receive direct support from nuclear armed states, progression within other disarmament steps would still be a positive development.

11. Furthermore, the TPNW aims to stigmatise nuclear weapons and reshape the way their utility is perceived by states. The treaty is the result of the Humanitarian Initiative, endorsed by numerous non-governmental organisations including ICAN, along with 127 states endorsing the Humanitarian Pledge. This movement has spent considerable resources in raising awareness of the devastating humanitarian and environmental effects of nuclear weapon use, with the objective of reshaping how states perceive the value of nuclear weapons. By altering the perception of nuclear weapons from viewing them as necessary for state security towards a threat to state security using information and empirical information could have a significant effect on shaping future disarmament negotiations, similar to the Cluster Munitions Convention for example.

12. In addition, the adoption of the TPNW may signal the emergence of a developing customary international law prohibition on the use and possession nuclear weapons, and contribute further to the possible customary prohibition on nuclear testing. Although this is by no means a certainty, and will not arise in the near future, such a customary prohibition stemming from the TPNW may bind nuclear-armed states, presenting a secondary means of impacting disarmament prospects. However, the clear opposition to the TPNW expressed by nuclear-armed states may suggest a concurrently developing persistent objector claim, hindering the influence of any customary norms that may develop. Whether the nuclear-weapon states under the NPT could continue with this persistent objection to any customary prohibition on use, or possession indefinitely in light of Article 6 NPT obligations however is less clear and is worth watching carefully.

13. Although in an ideal world the involvement of the nuclear-armed states would lead to the most successful outcome in terms of disarmament progress, I believe that the TPNW is more likely to be successful in drawing support from current nuclear-umbrella states. The TPNW has particular significance for nuclear sharing arrangements through NATO which would be incompatible with the TPNW under Article 1(g).

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4 For more on the Humanitarian Pledge, see [http://www.icanw.org/pledge/](http://www.icanw.org/pledge/)
generating support for the object and purpose of the TPNW amongst both umbrella and stationing states, an indirect effect on disarmament would occur by reducing nuclear dependency and counteracting indirect proliferation carried out by existing sharing agreements.

14. There has already been some opposition to the presence of nuclear weapon stationing. In Germany for instance, a long public anti-nuclear campaign has existed since the 1970’s, opposing both nuclear weapons and nuclear energy. Equally, the Netherlands as the only umbrella state to engage in negotiations have shown an awareness of the need to ‘build bridges’ between ban opponents and supporters. Furthermore, many NATO states such as Spain and Iceland remain part of the military alliance while opposing nuclear stationing on their territory. Building support amongst stationing states, can reduce indirect proliferation, and nuclear dependency of these states.

15. Amongst umbrella states, Japan experiences low public support for nuclear weapons dependency and development, particularly due to their use in Hiroshima and Nagasaki. Hibakusha in particular supported the awareness of the humanitarian consequences of nuclear weapons and endorsed the TPNW. Although the Japanese government view nuclear dependency as necessary for security purposes given the nuclear threat in North Korea, Japan were the only nuclear umbrella states to endorse the ‘humanitarian resolutions’ passed in the General Assembly prior to the TPNW negotiations. Similarly, the Australian Labor Party has recently declared its intention to sign and ratify the Treaty if elected at the next General Election, while local government bodies in Sydney and Melbourne

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have endorsed the ‘Cities Appeal’ issued by ICAN, opposing the ‘grave threat that nuclear weapons pose to communities throughout the world’.10

16. Although this does not directly lead to nuclear disarmament, generating scepticism towards nuclear weapons amongst nuclear umbrella states which in turn can exert pressure on nuclear-armed states. Furthermore, the TPNW aims to increase awareness of the humanitarian impact and consequences of nuclear weapons, an issue of importance for all states. Finally, the TPNW preamble notes the importance of ‘peace and disarmament education in all its aspects and of raising awareness of the risks and consequences of nuclear weapons for current and future generations’. Changing how states perceive nuclear weapons is perhaps the most vital aspect of the TPNW influence on nuclear disarmament efforts.

17. I end by offering some simple advice. Firstly, continuing to suggest that the TPNW may undermine non-proliferation goals is counter-productive, and somewhat illogical. The TPNW complements the NPT regime, and to suggest that it risks undermining this only risks furthering the divide between nuclear-armed states and non-nuclear weapon states. Secondly, and related to this first point, I believe the Government can take some small but necessary steps. As well as stopping the above argument, a simple recognition of the humanitarian motivations and concerns behind the adoption of the TPNW would show a willingness on the part of the UK as a responsible international actor to engage in meaningful disarmament negotiations. I do not expect the UK to simply ratify the TPNW, as it is simply unrealistic to expect such a drastic change in defensive policy in a short space of time. Instead, engagement by states and expert witnesses alike is vital in generating new ways of negotiating appropriate arrangements for disarmament, and recognising the humanitarian concerns can be a start of this process.

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10 For more information on the Cities Appeal in Australia, visit http://www.icanw.org/au/cities/