Introduction

1. The International Human Rights Clinic (the Clinic) at Harvard Law School is pleased to make this submission to the House of Lords International Relations Committee regarding its inquiry into the Nuclear Non-Proliferation Treaty and Nuclear Disarmament.

2. The Clinic participated actively in the negotiations of the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW). Its participation included disseminating research publications and analysis, making statements in the plenary and at side events, and providing legal advice to the International Campaign to Abolish Nuclear Weapons (ICAN), which received the 2017 Nobel Peace Prize. The Clinic holds deep expertise in the creation, analysis, and interpretation of weapons treaties. The Clinic has been actively involved in the disarmament field since 2005.

3. Following the adoption of the TPNW in July 2017, the Clinic has carried out research projects on various aspects of the treaty, producing several publications and submissions to governmental bodies. In particular, the Clinic has examined the TPNW’s compatibility with prominent multilateral and bilateral security arrangements as well as the potential benefits of the treaty’s positive obligations to assist victims and remediate the environment.

4. The Clinic welcomes the Committee’s inquiry and call for evidence. Drawing on the Clinic’s recent study and analysis of the TPNW, this short submission outlines the TPNW’s place in disarmament, the engagement of other countries with the TPNW, and the treaty’s compatibility with existing multilateral security arrangements.

The Treaty on the Prohibition of Nuclear Weapons and Humanitarian Disarmament

5. The TPNW is the most recent treaty in the field of humanitarian disarmament. Humanitarian disarmament seeks to reduce arms-inflicted human suffering and environmental damage through the establishment of norms. The United Kingdom (UK) has been actively involved with this approach to disarmament over the past two decades. It participated in the negotiations of and is a state party to the 1997 Mine Ban Treaty and the 2008 Convention on Cluster Munitions. As Foreign Office Minister Alistair Burt argued in 2010, the Convention on Cluster Munitions “is one of the most important disarmament treaties of recent years, addressing the humanitarian impact” of those indiscriminate weapons.¹

6. Humanitarian disarmament treaties encompass a combination of preventive and remedial measures. They incorporate prohibitions and stockpile destruction requirements to prevent future harm from indiscriminate and inhumane weapons. They also contain positive obligations to minimize the impact of harm that has already occurred.  

7. The TPNW adopts this humanitarian disarmament approach to avert the catastrophic humanitarian consequences of nuclear weapons. TPNW Article 1 prohibits, *inter alia*, the production, possession, testing, use, and assistance with use of nuclear weapons. Articles 6 and 7 create a framework of shared responsibility for assisting victims and remediating the environment harmed by past use or testing.  

The TPNW and the Nuclear Non-Proliferation Treaty

8. The TPNW furthers the objectives of the 1968 Nuclear Non-Proliferation Treaty (NPT), which the UK has joined and long promoted. NPT Article VI requires states parties to “pursue negotiations in good faith on effective measures relating to . . . nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” NPT states parties that join the TPNW and become subject to its nuclear weapons-related prohibitions will better comply with Article VI and advance its goal of nuclear disarmament.

9. Moreover, the TPNW enhances rather than undermines the NPT’s provisions. For example, the TPNW strengthens the NPT’s safeguard regime. Article 3 of the TPNW mandates that states parties maintain, at a minimum, their International Atomic Energy Agency (IAEA) safeguards obligations. TPNW states parties that have signed the IAEA’s stronger Additional Protocol, which is not a requirement of the NPT, must uphold the Protocol’s obligations.

Growing Engagement with the TPNW

10. Many of the UK’s partners and allies are actively engaged in deliberations on joining the TPNW, which was adopted by 122 countries in 2017. For example, at a national conference in December 2018, the Australian Labor Party debated and adopted a resolution committing to sign and ratify the TPNW when the party next forms a government. Switzerland has also been closely studying the TPNW. When a working group convened by the

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Federal Council recommended that Switzerland not join the TPNW at this time, a widespread public backlash led to both houses of parliament passing formal calls for the government to sign the treaty. Finally, in September 2018, the Spanish government committed to signing the TPNW as part of a deal with the political party Podemos.

The TPNW’s Effects on Multilateral Security and Military Cooperation

11. The UK, too, should engage with the TPNW, which is consistent with past disarmament law and taken seriously by the majority of nations. In addition, it should respect its allies’ legitimate decisions to debate, support, and join the TPNW.

12. The TPNW is not inherently incompatible with multilateral security arrangements involving the UK and its partners. The 1949 North Atlantic Treaty, for example, does not contain any reference to nuclear weapons and does not require members to participate in nuclear weapons-related activities prohibited under the TPNW. While the 2010 Strategic Concept identifies nuclear weapons as a central component of defense policy, that document is a non-binding political commitment. The fact that some NATO members already prohibit the deployment of nuclear weapons on their territory demonstrates that NATO countries have latitude to set their national nuclear weapons policies. NATO countries could thus join the TPNW and comply with their obligations under both treaties. Similarly, from a legal perspective, Australia would not be precluded from joining the TPNW due to its collective security agreement with the United States if it renounced its nuclear umbrella status.

13. Furthermore, states that ratify the TPNW can continue cooperating with the militaries of nuclear-armed states, including the UK, even though they cannot remain under a nuclear umbrella. Under the TPNW, states can participate in joint operations with the militaries of nuclear-armed states so long as there is no nexus between the cooperative actions and activities prohibited by the TPNW. The prohibitions in the TPNW closely mirror the prohibitions in the Mine Ban Treaty, which has been interpreted to permit such military cooperation. Indeed, the UK filed a declaration to that treaty explaining that “mere participation in the planning or execution of operations” with states that possess or use antipersonnel landmines

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10 Ibid., p. 10.
does not constitute prohibited assistance, encouragement, or inducement.\textsuperscript{11}

**Recommendations**

14. The government should adopt a constructive approach towards the TPNW, recognizing that it furthers efforts towards nuclear disarmament. The TPNW adopts the humanitarian approach to disarmament, which the UK has supported since the late 1990s. The treaty advances, rather than impedes, UK policy goals to alleviate the humanitarian impacts of indiscriminate and inhumane weapons and to work toward eventual disarmament. The government could meaningfully engage with the TPNW by:

a. Participating in meetings as an observer state when the TPNW enters into force;

b. Working with TPNW states parties to explore how the TPNW could fulfill the promise of the NPT;

c. Providing technical expertise on the TPNW’s verification mechanisms;

d. Supporting victim assistance and environmental remediation efforts, including by proactively releasing records related to UK nuclear testing withheld beyond the ordinary thirty-year period;\textsuperscript{12} and

e. Respecting the decisions of other countries to join the TPNW.

15. Parliament and its committees, including the International Relations Committee, should continue studying developments related to the TPNW and nuclear disarmament and contribute to policy development in this area. As noted above, states and publics across Europe and around the world are currently engaging with the TPNW. The UK Parliament has a constructive role to play in shaping government policy and educating the public, avoiding misconceptions about nuclear disarmament and the TPNW.

16. In the long term, the government should work towards signing and ratifying the TPNW to participate in a framework that provides for multilateral disarmament. As the UK has recognized, nuclear weapons pose grave humanitarian issues. The TPNW furthers the NPT’s commitment to nuclear disarmament and can provide a framework for the UK to pursue disarmament in a multilateral process.

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