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## **Submission to the House of Lords International Relations Committee Inquiry on the NPT and nuclear disarmament**

**Written evidence submitted by Dr Rebecca Johnson (personal capacity)  
January 2019**

I am Director of the Acronym Institute for Disarmament Diplomacy and founding president of the International Campaign to Abolish Nuclear Weapons (ICAN, 2017 Nobel Peace Laureate). I hold a PhD from LSE in International Relations, with my thesis on Multilateral Diplomacy and nuclear treaties (2004). I served for six years on the Board of the Bulletin of the Atomic Scientists (2001-2007) and three years as senior advisor to the International Weapons of Mass Destruction Commission, chaired by Dr Hans Blix (2004-06).

Relevant to this inquiry I have attended all review conferences and preparatory meetings of the Non-Proliferation Treaty (NPT) since 1994, providing contemporaneous reports in Non-Proliferation News and then Acronym's in-house journal *Disarmament Diplomacy* (which covered all aspects of conventional and WMD disarmament negotiations) from 1996-2009. From 2010-18 my contemporaneous analyses on the NPT and the development of the humanitarian initiatives leading to the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) were published by *openDemocracy* at: <https://www.opendemocracy.net/author/rebecca-johnson>. As well as my chapter on "Arms Control and Disarmament" in the Oxford Handbook of Modern Diplomacy (2013 ed.), I have written several books and numerous chapters and articles on the humanitarian strategies to ban nuclear weapons, other disarmament processes, multilateral treaties, women, peace and security.

### **1) Framing real world nuclear challenges**

1.1) In this Submission I focus mainly on nuclear risks and the relationship between the NPT and the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW). Based on my broader analysis of the changing legal, security, normative, military and technological environment for nuclear decision-making, I provide a number of near term and medium term recommendations for the UK Government to consider in the run-up to the 2020 NPT Review Conference and beyond.

1.2) I have also been asked to provide the Committee with a more detailed background on the NPT and TPNW, to provide context about the 2020 NPT Review opportunities for influence and prospects for success. The remainder of this Submission therefore endeavours to summarise as coherently as possible the main issues and outcomes of NPT Review Conferences from 1995 to the present, how the TPNW has been intertwined with the NPT from the start, bringing humanitarian disarmament perspectives into NPT debates, and the differences and commonalities in how the treaties address the shared objectives to diminish nuclear dangers, prevent nuclear use, and facilitate the elimination of all nuclear weapons. These sections are provided as background information and a historical resource for the Committee. I hope it becomes clear that the nuclear-related security challenges for the British government go much further than the next review conference.

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1.3) The UK's ability to influence the 2020 Review Conference outcome may not be large, but it has an important role to play in diminishing real world nuclear risks, fears and practices, with the over-arching imperative to prevent nuclear use, threats and war. Underlying the Committee's questions, the core political challenge is to find effective ways for the UK to engage more effectively with the positive and negative changes in the security environment, and contribute to strengthening the interconnected nonproliferation and disarmament regimes. As the TPNW moves towards entering into force (likely to be 2020 or soon after), its provisions offer new opportunities for multilateral engagement with nuclear armed states inside the NPT (the NPT5/P5), and, importantly, those proliferating outside any treaty-regime.

1.4) NPT Review conferences involve much sound and fury, but they appear to have little impact on the wider world. After four weeks of frenetic activity, with deadlock or compromise as time runs out, success and failure usually boils down to whether or not a consensus final document has been achieved. That in turn usually hinges on the US government's position (or, sometimes, the tensions or détente between Russia, China and the United States). The UK often but not always takes its lead from the UN positions.

1.5) The major issues that determine the "success" or "failure" of NPT conferences are nuclear disarmament and the Middle East (Israel's nuclear weapons, sustained outside the NPT regime). Attitudes towards Iran's nuclear programme go up and down, and the NPT conferences have failed to respond in any effective way to North Korea's 2003 withdrawal from the NPT and subsequent development and testing of nuclear weapons. There are generally arguments regarding nuclear safety and security, safeguards and energy (and what is meant by "peaceful purposes"), but these are usually papered over for the sake of consensus on an outcome document.

1.6) The Committee seeks recommendations for the UK Government ahead of the 2020 Review Conference. Though UK influence should not be exaggerated, it can sometimes be helpful. One recent example was the convening of "P5 talks" by Gordon Brown before the 2010 Review Conference, which helped to create a more collegial, constructive atmosphere among the NPT-recognised nuclear armed states that contributed to the 2010 Conference.

1.7) An earlier, substantive example is the role of the UK at the 2000 NPT Review Conference. The Labour Government shifted its early hostile position towards a nuclear disarmament initiative spearheaded by Ireland in 1998, partnered by Brazil, Egypt, Mexico, New Zealand, South Africa, Sweden. The initiative became known as the "New Agenda Coalition" (NAC) after foreign ministers of these countries (plus Slovenia, which subsequently pulled out after pressure from the United States) issued a call for a new agenda for nuclear disarmament. Soon after, the New Agenda Coalition adopted an NPT-focussed disarmament strategy and steps that I had sketched out in a 1997 article for the UN Institute for Disarmament Research (UNIDIR). As 2000 drew closer, this was embraced by many states and civil society activists. A mixture of parliamentary and civil society pressure (including the founding of the All Party Parliamentary Group on Global Security and Nonproliferation by the Acronym Institute and Malcolm Savidge MP), enabled the Labour government to take a constructive role at the 2000 Review Conference, helping to bring the other NPT5 states into intensive "sidebar" negotiations with the NAC group. Their negotiations resulted in a 13 paragraph plan of action on disarmament. Dubbed the

"Thirteen Steps", this in turn enabled the 2000 Review Conference to adopt a substantive and widely supported final document.<sup>1</sup>

1.8) Unfortunately, that significant NPT success was short-lived, the Thirteen Steps were reneged on by most if not all the NPT5, and in 2005 the Review Conference failed ignominiously, mainly due to the Bush administration's strategy to write the 2000 agreements and 1995 Middle East Resolution out of the record. It should be noticed that John Bolton was the principal architect of the 2005 Review Conference debacle. There are concerns among many NPT supporters that they may try to do something similar in 2020. Chris Ford's rewriting of NPT history, context and obligations in his recent speeches on "Creating the conditions for nuclear disarmament" (CCND) suggest US preparations in that direction. As in 2005, any US attempts along such lines would undermine the NPT even further and put the NPT states parties – and the UK – in a very difficult position, as happened in 2015.

1.9) Understanding the geostrategic and political drivers and contexts for the overall nuclear and security regimes as well as the NPT and TPNW, will, I hope, assist the Committee to frame and address the key challenges. Exogenous security and political factors will have more influence on the outcome of the 2020 Conference than the four weeks of discussions in New York in April and May. The most worrying developments include whether the US Administration carries out President Trump's threats to pull out of the JCPOA (Joint Comprehensive Plan of Action regarding Iran's nuclear programme), INF Treaty, and possibly other relevant agreements that underpin the rules-based international security architecture, and what happens with the process that has been initiated on denuclearising the Korean peninsula.

1.10) While recognising the importance of these factors, my submission does not try to predict these kinds of nuclear-related risks. There is much at stake. I hope that my analysis, recommendations and background information can help the Committee understand more about the history and interaction between the NPT and TPNW, and how the UK could show real leadership by engaging constructively with both.

## **2) UK Considerations and Recommendations**

2.1) The UK is a depositary of the NPT, a nuclear armed state, a member of NATO, and one of the permanent members of the Security Council, among other roles. It is currently committed to spending billions to keep on deploying nuclear weapons into the future. These positions bear significant responsibilities, and also play controversially into national and domestic debates about Britain's role and status in the world. UK engagement in the nonproliferation regime has been mixed, at times constructive, as described above; and at others, clinging to colonialist attitudes and nuclear weapons as if in a time warp.

2.2) If Brexit goes ahead, the UK should expect that many aspects of our international roles, influence and security expectations and arrangements will change, or at least come under unfamiliar pressures, likely to be more negative than positive. In addition to the Brexit confusions and uncertainties, there is political turmoil in NATO, growing US-Russian conflicts, more assertive policies from China, and the risks and uncertainties arising from President Trump's behaviour and policy shifts. All these factors make it more difficult than usual to hope and plan for a positive outcome for the 2020 Review Conference.

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<sup>1</sup> Rebecca Johnson, "The 2000 NPT Review Conference: a Delicate, Hard-Won Compromise", *Disarmament Diplomacy* 46, May 2000. The APPG on Global Security and Non-Proliferation was clerked by Acronym Inst. until 2003, at which time BASIC was given funding to provide clerking services, continuing today.

2.3) Enmeshed in so much anxiety and insecurity, would the Government in 2020 want – or be in a position – to offer leadership on nuclear issues? The Conference on Disarmament has been paralysed by structural as well as political obstacles, and the P5 is more divided and chaotic than ever. UK policies are largely stuck in the past with regard to nuclear power as well as weapons, throwing taxpayers money at two dangerous, unnecessary relics of past policies, while most of the rest of the world are moving on – in terms of energy and climate ambitions as well as security. What, then, might be possible for the UK to influence or accomplish with regard to the NPT and nuclear disarmament? As Parliament's Second Chamber, the House of Lords needs to provide greater scrutiny and ask the underlying questions, as well as make recommendations.

2.4) The TPNW was negotiated because it was needed to fill a legal gap in the security and nuclear regimes. That gap was what enabled certain states to benefit from the NPT while developing and deploying nuclear weapons, along with doctrines and practices of nuclear use. NPT states parties accepted indefinite extension of the NPT in 1995, but they did not accept indefinite possession of nuclear arsenals, or their perpetual modernisation. Though reducing arsenals is necessary and important, disarmament isn't about numbers but about getting rid of the capability to use nuclear weapons. That means changing the policies and attitudes that keep nuclear weapons in the nine arsenals. Most NPT parties decided that greater emphasis on prohibiting and preventing nuclear uses was needed because nuclear-armed governments like the UK were still modernising and deploying nuclear weapons and according them high value in security policies – even as they lectured the non-nuclear states and vetoed majority proposals at NPT Review Conferences.

2.5) The Committee needs to ascertain if the Government is willing to fulfil the NPT, halt the process of replacing Trident and undertake practical steps towards eliminating nuclear weapons from our security and defence policies as well as our arsenal. If the answer is no, then the UK will continue to preside over a dangerously eroding NPT. If yes, then the UK would be in position to seize the opportunities for influence and leadership that are growing through the multilateral, nondiscriminatory provisions of the TPNW as well as the NPT.

## **Recommendations**

- The Government should invite Scottish representatives to serve on the UK delegations to the NPT PrepCom in 2019 and the 2020 Review Conference. This was reportedly requested previously, with no response. In view of current uncertainties, and the special roles and concomitant risks affecting Scotland, inviting the Scottish Government to contribute to the NPT delegation would enhance overall understanding and expertise, especially regarding nuclear safety, security and emergency planning.
- The Government should undertake, together with appropriate nuclear, military, academics, practitioners and emergency planners, a comprehensive assessment of current risks of nuclear use and accidents, including through transports and deployment. Emphasis should be on UK risks and responsibilities, while at the same time the UK could encourage the P5 and other nuclear armed states to do likewise.
- It would help to create a positive environment for the 2020 NPT Review Conference if the Government would reinforce nonproliferation and disarmament words with actions. Relevant, incremental steps that would be advantageous for the UK would include dealerting the Trident system; and suspending further work on building Dreadnought and modernising UK warheads until there can be a full analysis of Britain's security needs in light of the changing legal, geostrategic, military and technological developments since 2015.

- To strengthen the NPT in the run-up to 2020, the Government should take a more constructive approach to the TPNW, and encourage other nuclear armed states to do likewise.
- As the TPNW approaches entry into force, the Government should consider attending meetings as an Observer. It would be valuable also for the UK to contribute technical expertise on issues such as monitoring, dismantling, verification and environmental remediation, where the UK has considerable experience.
- As confidence develops, the Government could show leadership by taking steps to prepare the UK to join the TPNW. This would likely entail, as a first step, an in depth inquiry into the political, security, technical, industrial, economic and related implications of such a decision. Such a study should be initiated as soon as Britain's future relationship with the European Union can be determined.

### **3) Nuclear Risks**

3.1) Nuclear risks changed somewhat, but did not end, when the NPT was adopted in 1968 or, later, the Soviet Union disintegrated in the early 1990s. After positive reductions and concerted disarmament efforts from 1987-2001, security and nuclear relations deteriorated again. Further destabilising weapons systems, technologies and war-fighting policies have now increased nuclear risks further.

3.2) The UK has nuclear policies that entail roles and responsibilities with heightened risk factors for the Thames Valley and Scotland, and the roads in between. While defence and foreign policy remain reserved to Westminster, the Scottish Government's devolved responsibilities include road safety, public health, civil contingencies and more. Scotland undertakes particularly important and hazardous roles with regard to UK nuclear weapons, with warheads stored at RNAD Coulport and the homeport for nuclear-armed and powered submarines at Faslane Naval base. In Berkshire, AWE Aldermaston and Burghfield carry out hazardous roles with nuclear materials and various kinds of high explosives. Nuclear warhead convoys travel up to eight times a year between AWE Burghfield in Berkshire to Coulport, putting both nations at risk. Most if not all these nuclear convoys carry warheads, generally for refurbishment or replacement.

3.3) From the cold war height of over 50,000 nuclear weapons in 1986, overall nuclear warhead numbers were reduced through unilateral and treaty-based actions, but their salience continued to be emphasised in the defence and deterrence doctrines of key states, including the UK. The reductions were achieved through unilateral actions (mainly cutting short range 'tactical' weapons) and bilateral strategic treaties. The US-Russian arsenals were practically halved, through reciprocal unilateral actions (e.g. the early Presidential Nuclear Initiatives) and various treaties such as START II, SORT and New START, which followed from the 1987 Intermediate-Range Nuclear Forces (INF) Treaty, now under considerable threat from the policies of Presidents Trump and Putin.

3.4) Since the cold war ended, the number of nuclear armed states almost doubled from five (NPT-recognised states, China, France, Russia, the UK and United States) to nine (with four outside the NPT: DPRK, India, Israel and Pakistan). This increases all the risk factors from accidents with warheads and nuclear technologies, mistaken or intentional uses leading to nuclear detonations, threats that go wrong for psychological, political, military or technical reasons, including failure to calibrate or read "deterrence signalling".

3.5) Risk factors such as miscalculation, computer and human error have continued to be a problem, causing at least 13 near-nuclear-use incidents since 1962. To these have been added cyber threats, new and destabilising weapons systems, and defences that blur the lines between offence and defence and create "use them or lose them" incentives to fire nuclear weapons first if fearing the possibility of an attack. Fear of attack does not necessarily correspond to any actual or meaningful threat, as noted by Chatham House.<sup>2</sup>

3.6) Many of these incoming military capabilities may be positive or negative depending on context and intention. The more nuclear armed actors and capabilities there are, the more they undermine the comforting assumptions of nuclear deterrence theories and make humanitarian risks more likely, including accidental or intentional nuclear war. The US and Russia's relationship has deteriorated in recent years due in part to their respective development and deployment of destabilising weapons and policies, such as new hypersonic weapons systems, scaleable yield and bunker penetrating weapons, and missile defences. Trump cited Russian violations of the INF Treaty in his bid to pull the United States out of that Treaty, while Putin had criticised the US for deploying land-based intermediate missiles that violate the INF Treaty, under the guise of missile defences in former Eastern bloc NATO members. If these bellicose leaders get their way, they will open up a free for all in intermediate-range "theatre" missiles, potentially bringing in China and others too.<sup>3</sup> As with the 2002 US withdrawal from the Anti-Ballistic Missile (ABM) Treaty, such steps invariably erode international security and make the world a more threatening and dangerous place – not only for any state that possesses nuclear weapons, but also for nuclear free states whose people would also suffer if nuclear weapons were detonated for whatever reason.

3.7) Cyber capabilities cast doubt on the vaunted secrecy and concealment considered necessary for nuclear deterrence in the policies of the UK and most if not all nuclear armed states. The pace of cyber developments carry growing concerns that defence systems could be compromised in ways that cause accidents and launches in circumstances that would be highly dangerous and potentially catastrophic.<sup>4</sup>

3.8) While irrationality has sometimes been embraced as a strategic component of deterrence theory, the nuclear threats and sabre rattling associated with unstable personalities in leadership are exposing the flaws inherent in nuclear deterrence and the dangers inherent in nuclear weapons. The arms race between India and Pakistan since 1998 has included nuclear threats from those countries' respective leaders amid ongoing risks of domestic terrorism and political instability.<sup>5</sup>

3.9) Weak, insecure and impaired leaders armed with nuclear weapons are a very high risk factor in any country. While support should be given to recent positive steps towards denuclearising the Korean Peninsula and replacing the 1950s cold war armistice with a confidence-building peace treaty that looks to the future, there are still many hurdles to overcome. While there is

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<sup>2</sup> See Patricia Lewis, Heather Williams, Benoît Pelopidas, and Sasan Aghlani, *Too Close for Comfort: Cases of Near Nuclear Use and Options for Policy*, Chatham House Report, April 2014

<sup>3</sup> Rebecca Johnson, Submission to the UK House of Commons Defence Committee on INF Treaty Withdrawal, 8 January 2019. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/defence-committee/consequences-for-uk-defence-of-inf-withdrawal/written/94734.html>

<sup>4</sup> See Andrew Futter, *Cyber threats and nuclear weapons*, RUSI Occasional Paper, 2016.

<sup>5</sup> See Acronym Institute 2016, "Security and humanitarian implications of relying on nuclear weapons for deterrence, and effective legal alternatives," UN Open-ended Working Group on Multilateral Nuclear Disarmament, A/AC.286/NGO/22/Rev.1. <http://www.acronym.org.uk/new-website/wp-content/uploads/2016/05/OEWG-Acronym-WP22-on-deterrence1.pdf>

much to welcome in the process initiated by South Korean President Moon Jae-in and DPRK leader Kim Jong-un, President Trump cannot be relied on to carry the important US part of this process forward responsibly and constructively.<sup>6</sup>

3.10) Nuclear risk factors are being increased by Trump's stated intention to withdraw the United States from important nuclear-related Treaties, most recently the INF Treaty and the JCPOA (negotiated and adopted not only with the US and Iran but also with the governments of China, Russia, Germany, France, and the UK, with high level European Union engagement). If the US goes ahead as threatened, it would wreck these verifiable legal instruments of arms control and restraint, and further undermine the credibility and effectiveness of the NPT. The impacts of such actions are likely to be especially threatening to the security of Europeans, including through harming military and economic commitments.<sup>7</sup>

#### **4) Background on the NPT and TPNW: intertwined approaches for nuclear security, disarmament and nonproliferation**

4.1) The nuclear nonproliferation and disarmament regime derives from the NPT but comprises other treaties, such as the Comprehensive Test Ban Treaty (CTBT) and its verification systems, which have not yet fully entered into legal force but provide useful monitoring and training roles; the safeguards and inspections regimes under the auspices of the International Atomic Energy Agency (IAEA); UN Security Council resolutions, notably 984 (1995) on security assurances, 1540 (2004) on preventing WMD acquisition by non-state actors, 1325 on women, peace and security, and resolutions addressing nuclear-related regional threats and problems; nuclear supplier arrangements; P5 talks on nuclear issues; nuclear security summits initiated by President Barack Obama's administration; other formal and informal arrangements. Bilateral arms reduction and limitation treaties (such as SALT, START, INF and also the ABM Treaty) contribute to the stability and credibility of the disarmament and nonproliferation regime, along with the Outer Space Treaty and various treaties and conventions prohibiting or limiting other kinds of weapons and military activities, including biological and chemical weapons, landmines and cluster munitions.

4.2 Many NPT governments view the controversial US withdrawal from the ABM Treaty in 2002 as having damaged the political-security relationship between Russia and the United States; it also resurrected an arms race that continues to fuel missile development by the US and NATO, Russia and China. In turn, these have impacts on the weapons developments of India, Pakistan and North Korea, among others. Along with the Iraq war, the ABM Treaty withdrawal and infamous "axis of evil" pre-war speech by President George W. Bush in 2002 further destabilised the international rules-based order with far reaching impacts for the nonproliferation regime. The Democratic People's Republic of Korea (DPRK) withdrew from the NPT soon after, and accelerated nuclear warhead and missile testing and development. It also precipitated an acceleration in Iran's uranium enrichment, reprocessing and missile developments, which have continued to cause difficulties for the NPT regime and meetings.

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<sup>6</sup> See Rebecca Johnson, The 'Libyan Model' is Unhelpful: Korea needs its Own Process for Peace and Nuclear Disarmament, *IDN Indepthnews*, 22 May, 2018

<https://www.indepthnews.info/index.php/armaments/nuclear-weapons/1890-the-libyan-model-is-unhelpful-korea-needs-its-own-process-for-peace-and-nuclear-disarmament>; and also Rebecca Johnson, As Trump and Kim shake hands, what does this mean for Koreans? *openDemocracy*, 13 June 2018. <https://www.opendemocracy.net/rebecca-johnson/as-trump-and-kim-shake-hands-what-does-this-mean-for-koreans>

<sup>7</sup> See my submission to the UK House of Commons Defence Committee on INF Treaty Withdrawal, 8 January 2019. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/defence-committee/consequences-for-uk-defence-of-inf-withdrawal/written/94734.html>

4.3 The most recent legal instrument to be added to the regime is the TPNW, which was opened for signature by the UN Secretary-General in September 2017. This has not yet entered force, but is likely to do so in the near future.

4.4) The NPT and TPNW are both legal and normative tools for international security. They differ in their approaches, reflecting the NPT's origins in the mid 1960s, at the height of the cold war rivalry between the American and Soviet superpowers, and the TPNW's origins in international humanitarian law and the complexities of multiple states and actors in which the risks, threats, use and impacts of certain weapons need to be taken into account through legal, institutional and normative means. The NPT's starting point was the need to put a cap on proliferation after five states – including the superpowers who ran the show – had already acquired nuclear weapons. It therefore focussed on prohibiting nuclear weapons for some, along with "good faith" disarmament commitments and a technical safeguards system for preventing further proliferation. The TPNW's starting point was the need to prevent nuclear use and war, which meant prohibiting the use of nuclear weapons and all the practical and operational activities that could lead to nuclear use by anyone. Both treaties established the verifiable elimination of all nuclear arsenals as their objectives, and the TPNW prescribed specific disarmament requirements and mechanisms for nuclear armed and enabling states to sign and comply. Verification is not covered in either treaty in detail, but the TPNW provides for monitoring, verification and enforcement tasks to be evolved when the Treaty enters force.<sup>8</sup>

4.5) As with the NPT's Thirteen Steps from 2000, which were the closest any review conference has come to a practical, step-based programme for fulfilling the NPT's Preamble and Article VI, the TPNW enjoins states to pursue its full implementation through unilateral, bilateral, plurilateral and multilateral steps, as appropriate. In addition, the TPNW has powers to adapt and develop appropriate monitoring, verification and enforcement systems as technologies and political conditions change, and where necessary to apply its legal provisions also to non-state actors and entities.

4.6) The NPT was arguably the most that could be achieved on nuclear weapons at the height of the cold war. Its fundamental objectives when it was adopted in 1968 were to prevent further proliferation and create disarmament obligations under international law. Though the NPT was initiated by Ireland and supported by Non-Aligned states, its objectives were significantly watered down when the US and Russia took over and rewrote the text, with the UK playing third wheel. Fewer than 30 states negotiated the NPT, which entered into force as soon as 43 states had signed and ratified, including the UK, USA and USSR. As deemed necessary under cold war political conditions, the NPT privileged the perceived strategic interests of certain nuclear armed states and their allies, and focussed the main burden of its prohibitions, safeguards and commitments on states without nuclear weapons. The NPT did not address the use of nuclear weapons until its 2010 Review Conference.

4.7) The TPNW grew from a multilateral humanitarian-based legal process that built on the consensus paragraphs in the 2010 NPT conclusions and recommendations, relating particularly to nuclear weapons use, international humanitarian law, and requirements to "establish the necessary framework to achieve and maintain a world without nuclear weapons".<sup>9</sup> The process involved international conferences on the "humanitarian impacts of nuclear weapons" (#HINW) hosted by the governments of Norway, Mexico and Austria through 2013-2014, two UN "open-

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<sup>8</sup> See ICAN's 18<sup>th</sup> January 2019 submission to this House of Lords Inquiry, which provides a very useful analysis on the TPNW's legal provisions and their intentions and implications.

<sup>9</sup> 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Part I, UN Doc. para A, v and para B, iii.

ended working groups" (OEWG) established by the UN General Assembly in 2013 and 2016, and then a negotiating mandate overwhelmingly adopted by the UN General Assembly on 23 December 2016 "to negotiate a legally binding instrument to prohibit nuclear weapons, leading to their total elimination".<sup>10</sup> Negotiations took place at the UN in New York during 2017, under General Assembly rules that meant they were equally open to all UN Member States. Consensus was deemed desirable but no state was structurally empowered to block or veto the negotiations, a procedural legacy of the cold war that has paralysed the Conference on Disarmament for over 20 years. Up to 140 states – all NPT states parties – participated in some or all of the negotiations.

4.8) The finalised Treaty was adopted on 7 July 2017 by 122 votes, with one against and one abstention. The UK, regrettably in the view of many negotiators and British citizens, chose not to participate in the negotiations or vote on the outcome. After the TPNW was adopted, the UK joined the US and France in a press statement declaring that they did "not intend to sign, ratify or ever become party" to it.<sup>11</sup> Such a boycott and media rejection from the UK Government of a UN-negotiated disarmament treaty is unprecedented. UK Governments have opposed other disarmament negotiations in the past, including the CTBT, Mine Ban Treaty and Cluster Munitions Convention, but they never rejected them in such a public, unequivocal statement. In fact, UK delegations have participated in negotiating processes, helped to make them as effective as possible, and (sooner rather than later) adapted their policies and signed and ratified the resulting treaties.

4.9) At the 2018 Preparatory Committee Meeting (PrepCom) of NPT Parties in Geneva, many NPT parties expressed support for the TPNW. Some also raised concerns that three of the NPT5 nuclear armed states had apparently declared their permanent rejection of a UN-based multilateral treaty that arose through the post 1995 NPT review process and was adopted by 122 NPT States Parties. Such a statement may be construed as violating those three States' NPT obligations. Many NPT delegations and NGOs called on all the nuclear armed states to engage constructively with the TPNW and help create the conditions for the full implementation of this and the NPT's disarmament and nonproliferation objectives and obligations.<sup>12</sup>

4.10) The TPNW puts the humanitarian impacts of nuclear weapons, and the imperative to ban and prevent activities that could lead to nuclear weapons being used, at the heart of its normative and legal prohibition regime. The TPNW takes a humanitarian approach that treats everyone's security interests equally, and establishes universally applicable prohibitions and obligations, with mechanisms for nuclear armed or dependent states to prevent nuclear use, spread and war by joining the treaty and ending their reliance and nuclear-enabling behaviour and policies.

## **5) A brief history of NPT review conference outcomes: what does success and failure signify?**

5.1) The Committee has framed its questions around what the UK could do in the run-up to the 2020 Review Conference, scheduled to take place in New York for four weeks in April-May 2020. Review conferences are of course important opportunities to assess and strengthen

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<sup>10</sup> UN General Assembly Resolution 71/258, adopted 23 December 2016

<sup>11</sup> See Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons," New York, 7 July 2017 <https://usun.state.gov/remarks/7892>; and Rebecca Johnson, "A new hope for nuclear free world – but where is the UK?", openDemocracy, 21 September 2017, <https://www.opendemocracy.net/uk/new-hope-for-nuclear-free-world-but-where-is-uk>

<sup>12</sup> See the detailed coverage of the 2018 NPT PrepCom from Reaching Critical Will, WILPF and ICAN at <http://reachingcriticalwill.org/disarmament-fora/npt/2018>

nonproliferation, but it would be wise not to judge the NPT's threats, health and effectiveness on the basis of review conferences. It is usual for review conferences to be judged as failures or successes on the basis of whether they are able to adopt a consensus final document. This is misleading.

5.2) In a brief survey of the NPT conferences held from 1995-2015 we see that two (1995 and 2010) were judged a success at the time even though no agreement was achieved on the review part of the document. Instead, as brief paragraphs below summarise, these conferences bypassed contentious disagreements over how to articulate the deep disagreements between the nuclear armed and non-nuclear states regarding progress (or lack thereof) on disarmament in particular. Unable to agree the review part of the text, the 1995 and 2010 Chairs managed to get agreement on specific aspects for future action. These were characterised variously as decisions, recommendations, resolutions or action points. The last fully consensus final document was in 2000.

5.3) This leads to a second observation: adoption of a final document has not so far guaranteed implementation of its decisions and agreements, notably by the NPT5 nuclear armed states. The 2000 Review Conference was widely hailed as a ground-breaking success at the time, but began to be undermined by certain nuclear armed states (notably France, Russia, and then the United States following the inauguration of George W. Bush as president in 2001).

5.4) Finally, treaties do not exist in a vacuum, but in a geostrategic and political context. Conflicts and domestic, regional and/or international rivalries feed into how treaties operate, for good or ill. For example, the US policies and wars that followed the terrorist attacks on New York and Washington on 11 September 2001 contributed to a toxic international environment in which nuclear weapons increased in value and salience for certain states. This led to deadlock in the 2005 Review Conference. This shook everyone up, leading to resurgence of pressure for action on ridding the Middle East of nuclear and other WMD; and in a different development to ICAN's founding and the humanitarian strategy that led to the TPNW.

5.5) The 1995 NPT Review and Extension Conference was essentially divided between states that wanted the 25-year old treaty to be indefinitely extended and those that did not. Indefinite extenders argued that this was necessary for longevity, confidence and stability. Opponents of making the NPT unconditionally permanent argued for shorter extension options that would have to be actively renewed. The latter, which included many non-nuclear states concerned that nuclear weapons would not be eliminated unless the non nuclear parties "held the nuclear armed states' feet to the fire", as one of the most recent NPT parties, South Africa, memorably articulated. Many were critical of the NPT regime for putting all the obligations on the non nuclear countries and not enough on those who possessed or sought nuclear weapons. Most were sceptical of deterrence doctrines, and viewed nuclear arms as political instruments of status, oppression and power projection. Disagreements prevented a consensus final document from being adopted, but clever diplomacy from the president of the Conference, Ambassador Jayantha Dhanapala, brought about a compromise package of decisions on Indefinite Extension, "Principles and Objectives for Nuclear Non-Proliferation and Disarmament", and "Strengthening the Review Process", together with a "Resolution on the Middle East". This "politically binding package" as described by Dhanapala, enabled to Conference to adopt the extension decision without a divisive vote.<sup>13</sup>

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<sup>13</sup> Rebecca Johnson, "Indefinite Extension of the Non-Proliferation Treaty: Risks and Reckonings, ACRONYM 7, *The Acronym Consortium*, London, September 1995; and Jayantha Dhanapala, with Randy Rydell, *Multilateral Diplomacy and the NPT: An Insider's Account*, United Nations, New York and Geneva, 2005.

5.6) The two key issues of contention in 1995 were nuclear disarmament and the Middle East. From the perspective of NPT meetings, the primary Middle East issue is the presence of Israel's nuclear weapons in the region. Israel's nuclear programme, based at Dimona, is outside the NPT and believed to comprise around 80 warheads. The programme is regarded as "ambiguous" and "opaque", as there considerable evidence but no formal acknowledgement by Israel.<sup>14</sup> The 1995 Resolution originated with the Arab States parties to the NPT, led by Egypt. It was broadened to include chemical and biological weapons as well as nuclear, as these other WMD were held by a number of states in the Middle East region at the time. The final Resolution was made more palatable to Israel, whose interests in the NPT are represented by the US, with text on the peace process and related matters, before being formally proposed by Russia, the US and UK, as the NPT's depositary states from 1968.

5.7) The 2000 NPT Review Conference was hailed as a major success after the consensus adoption of a strong final document that included a far-reaching 13-paragraph programme of action on nuclear disarmament (known colloquially as the Thirteen Steps). This was the product of intensive negotiations during the conference between the NPT5 and the group of non-nuclear states parties known as the New Agenda Coalition.<sup>15</sup>

5.8) The 2005 Review Conference was a bad-tempered failure that took three weeks to adopt its own agenda following US objections to inclusion of the 2000 Review Conference outcome. Politically, relations were deteriorating between the US, Russia and China as well as many Arab League states parties. Ostensibly the issues were about the 1995 Middle East Resolution and nuclear disarmament, notably the reneging on the Thirteen Steps adopted in 2000. The deadlock and failure were variously blamed on Egypt, Iran or the United States (particularly Bush administration and the architect of the US' NPT strategy, United Nations and Conference on Disarmament at the time, John Bolton). Bolton justified his role as maintaining US interests and freedom of action to develop new weapons, which in the Bush administration's view took precedence over any political interests that might be attached to preventing erosion of the nonproliferation regime.<sup>16</sup>

5.9) The 2010 NPT Review Conference managed to give consensus to a pared-down, forward-looking section of its final document titled "Conclusions and Recommendations for follow-on actions", which included 64 action points (few of which have been acted on) and agreement to appoint a Facilitator and convene a Conference in 2012 aimed at addressing the 1995 Resolution on the Middle East and developing a progress to negotiate a Middle East WMD-free zone. The review text was not adopted, mainly due to disagreements over the reasons for the lack of meaningful progress to implement Article VI on nuclear disarmament. Despite this, the hope engendered by the apparent agreement on taking forward the 1995 Resolution on the Middle East led many to pronounce the 2010 Review Conference a success at the time. As also noted,

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<sup>14</sup> See recent article from Israeli author of "Israel's Bomb", Avner Cohen, "Time for Israel to Drop Nuclear Ambiguity," [Haaretz](#), 21 June 2018. SIPRI and the Bulletin of Atomic Scientists estimate the Israeli arsenal to be around 80, rather lower than the estimates of 200 bandied around after Mordechai Vanunu's leaked information to the Sunday Times, now largely discredited. Israel itself maintains "opacity" regarding its nuclear programme.

<sup>15</sup> Rebecca Johnson, "The 2000 NPT Review Conference: a Delicate, Hard-Won Compromise", *Disarmament Diplomacy* 46, May 2000, <http://www.acronym.org.uk/old/archive/46npt.htm>

<sup>16</sup> Rebecca Johnson, "Politics and Protection: Why the 2005 NPT Review Conference Failed" *Disarmament Diplomacy* 80, Autumn 2005, <http://www.acronym.org.uk/old/dd/dd80/80npt.htm>; and Sergio de Queiroz Duarte, A President's assessment of the 2005 NPT Review Conference, *Disarmament Diplomacy* 81, Winter 2005 <http://www.acronym.org.uk/old/dd/dd80/80npt.htm>

ICAN and governments now also had the NPT text they needed to take their humanitarian disarmament concerns and strategies to the next step.<sup>17</sup>

5.10) The formal reason for the 2015 NPT Review Conference's inability to adopt a final document was that Canada, the UK and the United States blocked consensus over the wording of a paragraph on the organization and timeline for another proposed conference to rid the Middle East of nuclear and other WMD. This had been mandated in 1995, given practical agreement in 2010, and was still undelivered. The paragraph had been agreed by the rest of the Conference, along with other sections. With the clock ticking on the last day, and the Middle East paragraph recognised as important to ensure continued NPT "buy in" from many Arab and Non-Aligned Movement parties, no further negotiations were possible. The US was chiefly blamed, and accused of representing the interests of Israel, a non NPT state party. The UK and Canada were perceived as supporting the US position more from alliance motivations than deep objections to the text.<sup>18</sup>

5.11) The disarmament sections were even weaker in the draft 2015 document than the unfulfilled action points adopted in 2010 (and much less than the Thirteen Steps adopted fifteen years earlier by the 2000 Review Conference). Almost all the salient references to the humanitarian initiatives and impacts of nuclear weapons had been struck out by one or other of the nuclear armed NPT5. While this angered many nuclear free governments, 107 of whom had signed up to an Austrian-initiated "humanitarian pledge", they went along with the conference president's draft outcome document to demonstrate support for the NPT regime. It is clear, with hindsight, that the vetoing of the 2015 outcome document by the US, UK and Canada galvanised the majority of NPT parties to put their weight behind the humanitarian initiative to get multilateral negotiations on a nuclear ban treaty.<sup>19</sup>

5.12) Nuclear disarmament and the Middle East have continued, in one form or another, up to and including the 2015 NPT Review Conference, to be the two major issues of contention on which subsequent NPT meetings have either foundered or made progress. The non-nuclear NPT parties do not want to accept or normalise the NPT's status, arsenals, and resistance to fulfilling the disarmament "pillar" of the NPT enshrined in the preamble and Article VI. Similarly, it is important for the Arab States and others not to tacitly accept and normalise Israel's nuclear status.

## **6) From nuclear risks to humanitarian consequences and a new normative-legal instrument**

6.1 From 2005 onwards, civil society had been encouraging scientists to update studies on the risks, impacts and consequences of nuclear weapons use, deployments and proliferation. These studies on nuclear risks and effects went beyond the immediate blast, heat, and fires of the initial explosion. They took as their baseline a regional nuclear "exchange" in which India and Pakistan

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<sup>17</sup> Rebecca Johnson, "Assessing the 2010 NPT Review Conference", *Bulletin of the Atomic Scientists*, July 2010, 66:4

<sup>18</sup> Rebecca Johnson, NPT: Cornerstone of nuclear non-proliferation or stumbling block, *OpenDemocracy*, 28 May 2015, <https://www.opendemocracy.net/5050/rebecca-johnson/npt-107-nations-pledge-to-negotiate-on-nuclear-disarmament>; see also Dan Zak, U.N. Conference collapses over WMD-free zone in the Middle East, *Washington Post*, 22 May 2015, [https://www.washingtonpost.com/world/national-security/un-nuclear-conference-collapses-over-wmd-free-zone-in-the-middle-east/2015/05/22/8c568380-fe39-11e4-8c77-bf274685e1df\\_story.html?noredirect=on&utm\\_term=.11cea22d77b1](https://www.washingtonpost.com/world/national-security/un-nuclear-conference-collapses-over-wmd-free-zone-in-the-middle-east/2015/05/22/8c568380-fe39-11e4-8c77-bf274685e1df_story.html?noredirect=on&utm_term=.11cea22d77b1)

<sup>19</sup> See Alexander Kmentt, "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*, Cambridge Journals, July 2016 <https://www.icrc.org/en/international-review/article/development-international-initiative-humanitarian-impact-nuclear>; and Daniela Varano and Rebecca Johnson, NPT: Nuclear colonialism versus democratic disarmament, *openDemocracy*, 21 May, 2015, <https://www.opendemocracy.net/5050/rebecca-johnson-daniela-varano/npt-nuclear-colonialism-versus-democratic-disarmament>

used fifty Hiroshima-sized bombs against each other's cities. In reality the weapons being developed by these regional rivals are considered to have a nuclear yield many times larger than Hiroshima. The scientists updated both the radiation studies and "nuclear winter" research from the 1980s. They concluded that even a relatively limited regional nuclear war would create a sufficiently dense dust cloud to encircle the earth and cause years of prolonged freezing (nuclear winter) as well as climate distortions that would disrupt agriculture around the world, leading to mass famine. (Lest anyone imagine nuclear winter could counteract global warming, it is important to understand that the nuclear studies incorporated the latest climate data; they both create catastrophic changes for humanity.) The nuclear winter effects would mainly be caused by the abruptness and longevity of the temperature distortions on agriculture around the world – and therefore on food resources, causing years of famine across swathes of humanity.<sup>20</sup>

6.2) Up to two billion people across the whole world could die of starvation as a consequence of such regional nuclear wars.<sup>21</sup> British scientists calculated that a similar global catastrophe could result if the Trident missiles carried on one Vanguard-class submarine were used against six major Russian cities.<sup>22</sup>

6.3) It was studies such as these, and the series of international conferences on the humanitarian impacts of nuclear weapons hosted by the governments of Norway, Mexico and Austria in 2013-14 that convinced many governments of the necessity to tackle the nuclear risks to their own countries by delegitimising and banning nuclear weapons for all states.

6.4) The humanitarian strategies to bring about a globally applicable multilateral nuclear prohibition treaty grew after the ignominious failure of the 2005 NPT Review Conference, compounded by the military and humanitarian disasters unfolding with the ongoing wars in Iraq and Afghanistan. Many non nuclear armed states, especially those that had joined nuclear weapon free zones (NWFZ, in legal force covering, Africa, Latin America and the Caribbean, the South Pacific, South East Asia and Central Asia), were concerned and disappointed that essential disarmament and nonproliferation obligations were not being taken seriously by the nuclear armed states inside and outside the NPT. While the Arab States redoubled their efforts to initiate a process for a zone free of weapons of mass destruction in the Middle East (MEWMDZF), aiming for consensus commitments at the 2010 NPT Review Conference, others were strategising with key civil society actors to bring new thinking and International Humanitarian Law perspectives into the NPT regime.

6.5) In putting the spotlight on the actual and threatened uses and risks of nuclear weapons, ICAN and a growing number of governments sought to stigmatise and ban nuclear weapons through a multilateral legal process that would remove any incentives for making, keeping, developing, deploying or using such inhumane weapons of mass annihilation. The strategy was to show what is at stake for security far outside the territory of nuclear armed states and enable as many governments as possible to play an active role in achieving a nuclear prohibition treaty as the next step towards genuine disarmament. The aim was to change the terms of how nuclear and non-nuclear governments attach weight to nuclear risks and value to nuclear arsenals.

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<sup>20</sup> A. Robock, I. Oman, G.I. Stenchikov, O.B. Toon, C. Bardeen, and R.P. Turco, "Climatic consequences of regional nuclear conflicts", *Atmospheric Chemistry and Physics*, 7, 2003-2012, 2007, [www.atmos-chem-phys.net/7/2003/2007](http://www.atmos-chem-phys.net/7/2003/2007). C. Bardeen *et al.*, 'Climatic Consequences of Regional Nuclear Conflicts', *7 Atmospheric Chemistry and Physics* (2007), available at <http://www.atmos-chem-phys.net/7/2003/2007>.

<sup>21</sup> Ira Helfand, *Nuclear Famine: Two Billion People at Risk*, IPPNW, December 2013, <https://www.ippnw.org/nuclear-famine.html>.

<sup>22</sup> Philip Webber, *The climatic impacts and humanitarian problems from the use of the UK's nuclear weapons*, Scientists for Global Responsibility, February 2013 (revised from SGR Winter 2008). <http://www.sgr.org.uk/publications/climatic-impacts-and-humanitarian-problems-use-uks-nuclear-weapons>

6.6) Banning nuclear weapons was not expected to get rid of the arsenals overnight, but to diminish their value and foster stronger incentives to get out of the dangerous, destabilising nuclear business, with sharper normative and legal tools to create the conditions for the complete elimination of nuclear weapons.

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