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Study

On the legal relationship between the Treaty on the Prohibition of Nuclear Weapons and the Non-Proliferation Treaty

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1. On the narrative of the "incompatibility" of the Treaty on the Prohibition of Nuclear Weapons and the Non-Proliferation Treaty

On 22 January 2021, the **Treaty on the Prohibition of Nuclear Weapons** (henceforth also referred to as the TPNW or ban treaty) adopted on 7 July 2017 enters into force. A broader public is now aware of the TPNW above all because the **International Campaign to Abolish Nuclear Weapons** (ICAN), which supported the treaty with numerous campaigns, was awarded the Nobel Peace Prize in 2017. The discussion and analysis of the TPNW by experts in this field, however, began long *before* its entry into force – generating controversy the like of which has not been seen for virtually any other international law treaty in recent times.

In spite of its stated commitment to the goal of a world without nuclear weapons ("**Global Zero**"), to date Germany has not joined the Treaty on the Prohibition of Nuclear Weapons, for both political and legal reasons.

In the Federal Government's view, the treaty takes the "wrong path" towards achieving the goal of global disarmament. The political debate over Germany's potential accession to the TPNW now seems more or less deadlocked. Not only have arguments between opponents and supporters of the TPNW been amply exchanged, they have become almost **entrenched as narratives**: In addition to the standard argument that the **TPNW is incompatible with nuclear sharing and Germany's membership of NATO,** the narrative of a (possible) **weakening of the Non-Proliferation Treaty** of 1 July 1968 (henceforth also referred to as the NPT) is also repeatedly raised. Critics of the treaty see the TPNW as potentially harming the NPT and jeopardising its *acquis* by establishing competing international legal norms.

The **Federal Government's 2017 Annual Disarmament Report** states:

> "The Federal Government was not involved in the negotiations on this treaty - like all NATO Member States with the exception of the Netherlands, which, however, voted against the treaty - nor did it sign it. It does not consider such a treaty suited to actually and verifiably achieving the goal of a world without nuclear weapons, which it also aspires to. None of the nuclear weapon states, on whose involvement nuclear disarmament that is geared towards actual, practical progress hinges first and foremost, took part in the negotiations. Furthermore, the ban treaty risks causing lasting damage to the NPT and the control regime associated with it to prevent nuclear proliferation, as well as endangering the global non-proliferation and disarmament regime. The Federal Government is particularly concerned about the important question of verification of the implementation of a "ban on nuclear weapons", whose regulation in the ban treaty in its view falls short of the applicable verification standards of the IAEA and the NPT states parties. (…)."

In the Federal Government's answer on 19 January 2021 to a minor interpellation by the Left Party parliamentary group of 22 December 2020, the Federal Government notes the risk of a "fragmentation and real weakening of international disarmament efforts".

NATO comments on this go in the same vein:

> "The ban treaty is at odds with the existing non-proliferation and disarmament architecture. This risks undermining the NPT, which has been at the heart of global non-proliferation and disarmament efforts for almost 50 years, and the IAEA Safeguards regime which supports it. (…)."

> "(...) On the other hand, the ban treaty lacks any rigorous or clear mechanisms for verification, and has not been signed by any state that possesses nuclear weapons, and thus will not result in the elimination of a single nuclear weapon. It risks undermining the global non-proliferation and disarmament architecture, with the NPT at its heart for more than 50 years, and the IAEA Safeguards regime that supports it."

The US has voiced the criticism that the TPNW

> "exacerbates political tensions on disarmament, dividing states into overly-simplified camps of 'nuclear weapons supporters' and 'nuclear weapons banners', rather than recognizing shared interests. (...) Reinforcing this false dichotomy and worsening the world's **polarization on disarmament** will make further progress within the institutions that have been vehicles for success, such as the NPT review process, significantly more difficult."

The narrative of "damage" to the NPT and a "threat" to its aims and objectives, including the alleged "undermining of NPT verification standards" from the Treaty on the Prohibition of Nuclear Weapons – for the sake of simplicity henceforth referred to as the **"incompatibility narrative**" - has been repeatedly put forward by critics of the TPNW, but legally only rudimentarily substantiated.

Literature on this evokes *inter alia* the danger of "**cherry-picking**", arguing that countries could rid themselves of "inconvenient" control obligations under the NPT by acceding to the TPNW and citing their inconsistency with the new TPNW. States could presumably **"play off" both agreements against each other** and "offset" support for the new TPNW by withdrawing their support for the old NPT. There have been warnings of the risk of "**forum shopping**" and disturbing the careful balance of the non-proliferation regime. In the worst-case scenario, so the argument, the TPNW could "be used as a pretext to leave **the more inconvenient NPT** and then only be part of the TPNW."

Large sections of the literature on this subject, especially from the area of international disarmament law, draw the opposite conclusion:

> "The drafters of the TPNW took great care to avoid any conflict with the NPT. This intention is reflected in their repeated statements highlighting the mutually reinforcing nature of the two treaties, as well as in the TPNW text. (...) While not identical, the core obligations of the two treaties thus seem to be perfectly consistent with one another."

Thomas Hajnoczi, head of the Austrian delegation to the TPNW negotiations, sums up as follows:

> "In sum, the negotiations of the TPNW were marked by the utmost care to make the TPNW a new legal instrument in line with the existing disarmament and non-proliferation regime. The treaty explicitly and structurally fits into the framework created by the NPT and constitutes a necessary measure for the implementation of its Article VI. The TPNW therefore did not create a parallel universe to the traditional one founded on the NPT, but on the contrary, makes the existing universe of legal instruments around the NPT stronger."

The "incompatibility narrative" itself quite evidently requires verification.

In this context, the question arises as to which provisions of the TPNW threaten the Non-Proliferation Treaty as a central element of the nuclear order and what is supposed to constitute a weakening of the NPT and its verification standards. Are there specific provisions in the TPNW that fall short of the verification standards of the NPT? Or is more a question of verification standards being lowered as a result of an alternative application ("*pick and choose*") of treaty-based control mechanisms?

In terms of the **relationship between the two treaty regimes**, the following questions need to be answered:

- Does the TPNW facilitate the possibility for its Member States to derogate or withdraw from their obligations arising from the NPT and is such behaviour realistically to be expected within the NPT community?

- Do the obligations under one of the two treaties take precedence over those of the other and are NPT obligations replaced, relativised or displaced by higher-ranking obligations under the TPNW?

- Does the "incompatibility narrative" only apply to the verification obligations of non-nuclear weapon states or also to nuclear sharing states or nuclear weapon states that do not intend to join the TPNW in the foreseeable future anyway?

The "incompatibility narrative" is an **expression of what is evidently an unclear relationship between the two treaty regimes**. Against this background, a motion tabled by the Alliance 90/The Greens parliamentary group on 13 January 2021 on "Germany's accession to the Treaty on the Prohibition of Nuclear Weapons" now calls on the Federal Government

> "to take an active role in ensuring that the relationship between the Non-Proliferation Treaty and the Treaty on the Prohibition of Nuclear Weapons is designed to be constructive, so that the two disarmament norms stand side by side compatibly."

The relationship between the TPNW and the NPT is one of the intriguingly controversial international law issues surrounding the new Treaty on the Prohibition of Nuclear Weapons. The now much larger body of international law literature on this topic understands the relationship between the TPNW and the NPT as **one caught between competition, compatibility and conflict**.

Some of the literature, on the other hand, views the TPNW less as an isolated instrument and more as a treaty that will be embedded in the nuclear disarmament architecture, with already existing institutions, structures and treaty regimes having the potential to work *for, with* or *against* the TPNW in the future. Both treaties then forming a kind of "tandem" whose mechanisms will need to be attuned to one another and implemented together.

The **first part** of this study (see 2. below) examines the verification regimes of the Treaty on the Prohibition of Nuclear Weapons and the Non-Proliferation Treaty as parts of a common nuclear disarmament architecture. In terms of the "incompatibility narrative", it explores the question of whether the Treaty on the Prohibition of Nuclear Weapons weakens, undermines or falls short of the verification regime of the Non-Proliferation Treaty from the perspective of international law.

The **second part** of the study (see 3. below) turns its attention to the relationship between the Treaty on the Prohibition of Nuclear Weapons and the Non-Proliferation Treaty. Based on the questions already raised, it will probe the tension between the treaty regimes and examine questions of conflict and primacy both in terms of norms and legal practice.

2. The verification regimes of the TPNW and the NPT as parts of a common nuclear disarmament architecture

2.1. Initial methodological considerations

There are **certain methodological problems to comparing or contrasting the two verification regimes**, as echoed in ICAN's comments for the public hearing of the German Bundestag's Subcommittee on Disarmament on 3 March 2020**.**

After all, the TPNW and NPT verification regimes are **not two completely isolated**, but rather legally **interlocking treaty mechanisms that in part add to each other**. This means the TPNW does **not** create **entirely new verification structures**, but rather draws to a large extent on existing mechanisms, such as the states parties' safeguards agreements with the International Atomic Energy Agency (IAEA).

That aside, the two treaties pursue **different objectives**, which are ultimately also reflected in the verification approaches they enshrine: The aim of the Non-Proliferation Treaty (NPT) is to prevent the proliferation of fissionable material and nuclear weapons technology, essentially accepting and cementing a "two-class society" between the five traditional NPT nuclear weapon states and the non-nuclear weapon states. The *ban* treaty, which is first and foremost a nuclear *disarmament treaty*, aims to end this asymmetry over the long term, as such closing a "gap" in disarmament law existing in the Non-Proliferation Treaty, which arises as a result of the (incomplete) disarmament obligation under Article 6 NPT. Whilst the NPT - but above all the IAEA - has created verification mechanisms to curb *proliferation*, the Treaty on the Prohibition of Nuclear Weapons above all establishes disarmament control mechanisms. So methodologically,

comparing and contrasting the two treaty regimes runs the risk of comparing "apples to oranges" to a certain extent.

This approach of comparing and contrasting the two different verification regimes and possibly subjecting them to an "effectiveness ranking" is barely echoed at all in the Anglo-American debate, which could lead one to surmise that the debate in this country is once again "typically German".

2.2. The treaty regimes in practice

It is a truism that the effectiveness of a treaty-based control mechanism hinges not on the wording of the treaty *text* alone but rather is **the product of what states actually do in practice.** A legal study of the TPNW and NPT verification regimes therefore always needs to include developments in practice.

The **NPT** now has **50 years of practice** to look back on. Since entering into force in March 1970, the NPT verification mechanism has been based on the **International Atomic Energy Agency** (IAEA) founded in 1957, which under Article 3 NPT is responsible for monitoring the Non-Proliferation Treaty (for instance in the form of satellite surveillance, on-site inspections, etc.). Within the framework of the IAEA, various **verification formats** have emerged and established themselves, which will be explained in greater detail (see 2.4. below). In addition to the **review conferences** held every five years, the disarmament practice of states also includes NPT spillover formats such as the *Nonproliferation and Disarmament Initiative* (since 2010) and the *Stockholm Initiative for Nuclear Disarmament*. Furthermore, the NPT verification regime has been subject to evaluations by the peace research, nuclear science or political science communities for years. Last but not least, the NPT has become the subject of national and international case law.

The **treaty and verification regime of the TPNW** on the other hand, which enters into force on 22 January 2021, has **yet to be tested in practice**. International monitoring bodies, which the TPNW provides for under Article 4, to date only exist on paper. Procedures, long since established in the context of the NPT, still have to get up and running for the TPNW. A meeting of all states parties to the TPNW, which Article 8 TPNW sets forth - analogously to the NPT Review Conference - to examine matters relating to the application and implementation of the treaty and, where necessary, to take further decisions, will be convened by the Secretary-General of the United Nations at the earliest within one year of the entry into force of the TPNW (see Article 8 (2) TPNW). The **contours of the verification regime** outlined in the treaty will only gradually be "filled with life". At present, it is unknown how the TPNW will fit into the nuclear disarmament architecture and what practical added value or **development potential** it may have. **National implementation** of the treaty, which Article 5 TPNW focusses on, will also need to first stand the test of time.

A **definitive judgement on the TPNW verification regime**, which not only takes into account the mere wording of the treaty provisions, but also examines state practice, including methods, techniques and verification procedures, **is not currently possible in any serious form**. Apodictic conclusions and predictions of the verification regime of a treaty that has not even entered into

force yet (allegedly) undermining or damaging the NPT should, however, be viewed with a certain degree of caution.

2.3. Taxonomy of the TPNW verification regime

The verification regime of the Treaty on the Prohibition of Nuclear Weapons governed by Articles 3 and 4 TPNW, is relatively complicated. **In principle, the TPNW differentiates between the obligations of non-nuclear weapon states** (under Article 3 TPNW) and those of **nuclear weapon states** (under Article 4 (2) and (3) TPNW). Article 4 (1) TPNW, on the other hand, refers (only) to states that have abandoned their nuclear weapons programme in the period *after* the adoption but *before* the entry into force of the TPNW (7 July 2017 to 22 January 2021).

States involved in NATO's **nuclear sharing** *(henceforth*: nuclear sharing states) - in addition to Germany, these are Belgium, the Netherlands, Italy and Turkey - are regarded by the TPNW as non-nuclear weapon states. If they acceded to the treaty, this means that nuclear sharing states would be subject to the verification regime for non-nuclear weapon states. However, the provisions of the TPNW go further with regard to nuclear sharing states than for non-sharing states. In addition to Article 3 TPNW, the **special provisions** of Article 4 (4) TPNW also apply.

2.4. Verification provisions for non-nuclear weapon states

The TPNW lays down the verification mechanism for non-nuclear weapon states in Article 3:

> "1. Each State Party (...) shall **at a minimum maintain its International Atomic Energy Agency safeguards obligations in force at the time of entry into force of this Treaty,** without prejudice to any additional relevant instruments that it may adopt in the future.
>
> 2. Each State Party (...) that has not yet done so shall conclude with the International Atomic Energy Agency and bring into force a **comprehensive safeguards agreement** (*INFCIRC/153 Rev. 2)*. Negotiations of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party. Each State Party shall thereafter maintain such obligations, without prejudice to any additional relevant instruments that it may adopt in the future."

Article 3 TPNW refers to the IAEA safeguards agreements and as such draws on NPT verification standards, which are outlined and explained below.

2.4.1. Safeguards agreements with the IAEA

The verification regime of the Non-Proliferation Treaty is set out in Article 3 NPT but has **continuously evolved and become more differentiated under the aegis of the IAEA.** Under Article 3 NPT, it is the IAEA's task to implement **safeguards** with all non-nuclear weapon states. The IAEA is to ensure that no fissionable material is diverted from declared nuclear activities for the manufacture of nuclear weapons. The NPT itself, however, **does not lay down any specific safeguards**. It is left up to the IAEA to design the technical means and measures for verification,

for instance through a safeguards agreement on inspection rights and *safeguards.* The **comprehensive safeguards agreements** between the NPT states and the IAEA, which are binding under international law, make the entire declared fissionable material flow - so the process from import or extraction to the disposal of nuclear material - subject to controls.

Safeguards agreements in the NPT non-proliferation regime are concluded in accordance with IAEA standardised guidelines *INFCIRC/153 (corrected)*, whereby a state undertakes to accept IAEA safeguards on all nuclear material in all peaceful nuclear activities on its territory. Under these agreements, the IAEA has the right and the obligation to ensure that safeguards are in place to ensure that this material is not used for nuclear weapons.

Although the adoption of safeguards is **obligatory under international law** under Article 3 NPT, a small number of NPT member states have still not concluded safeguards agreements with the IAEA to date.

Article 3 TPNW now requires the **maintenance** of existing verification agreements, **but at a minimum the conclusion of a standard verification agreement** with the IAEA as **set forth under the Non-Proliferation Treaty.** The obligation under Article 3 TPNW is therefore **commensurate with the requirements of Article 3 (1) of the Non-Proliferation Treaty**. Article 3 TPNW stipulates this verification standard as the **minimum standard** for non-nuclear weapon states. The report by the Norwegian Academy of International Law on the Treaty on the Prohibition of Nuclear Weapons highlights the difference between the verification provisions of Article 3 NPT and Article 3 TPNW in terms of IAEA safeguards agreements:

> "The TPNW commits any party that has not yet done so to bring into force a comprehensive safeguards agreement with the IAEA based on IAEA document *INFCIRC/153 (Corrected)*. This makes the TPNW **considerably more precise than the NPT**, which only obliges its parties to 'accept safeguards' set forth in an unspecified agreement to be negotiated with the IAEA. At the time of the NPT's adoption, the IAEA applied safeguards under the considerably less robust *INFCIRC/66/Rev. 2*. The stronger model agreement *INFCIRC/153* was adopted by the IAEA Board of Governors in March 1971 - more than three years after the adoption of the NPT - and is today, in its corrected form, the basis for all comprehensive IAEA safeguards applied in NPT non-nuclear-weapon states" (...).

2.4.2. IAEA Additional Protocol

The discovery of **undeclared clandestine nuclear activities** in Iraq in 1991 which had not been reported to the IAEA proved the verification mechanism of the NPT up until that time to be **insufficient.** This prompted the IAEA to develop an **Additional Protocol**, which was adopted by the IAEA Board of Governors in 1997. Building on the IAEA safeguards agreements, the Additional Protocol requires the conclusion of additional **agreements with the IAEA**, which are tailored to the member state in question and are **binding under international law**. The 1997 Additional Protocol enables IAEA inspectors to carry out unannounced inspections at any

facility. It also enables the IAEA to issue an assurance that there is no evidence of undeclared nuclear activities in an NPT Member State.

To date, the IAEA Additional Protocol has been signed by 150 NPT states and is currently in force for 136 NPT states (including Germany) and the European Atomic Energy Community (EURATOM). This includes most states engaging in nuclear activities. The "problem child" in this context is Iran. As far as is known, **once IAEA Additional Protocols** have **entered into force, they have not since been cancelled / suspended** by the states; the *Model Protocol* does not contain a withdrawal clause, it only sets out provisions for its entry into force.

As long as the IAEA Additional Protocol has not been accepted by all NPT Member States, it creates a "**two-class" verification regime** within the non-proliferation regime.

2.4.3. Other verification formats

In addition to the safeguards agreements and the IAEA Additional Protocol, **other verification formats** have emerged under the aegis of the IAEA.

- *Voluntary offer agreements* of the NPT's five nuclear weapon states relate to their peaceful nuclear activities.

- *Item-specific safeguards agreements* are based on the safeguards agreement *INFCIRC/66/Rev.2*. States parties to such agreements undertake not to use nuclear material, facilities or other items subject to the agreement for the manufacture of any nuclear weapons or to further any military purposes. The IAEA implements safeguards pursuant to such agreements in three states that are not party to the NPT.

- *Small quantities protocol:* This protocol, which was standardised in 1974 and revised in 2005, can be concluded in conjunction with a *comprehensive safeguards agreement* and allows the reporting obligations for fissionable material to be limited.

2.5. Criticism of the TPNW verification regime

It is against the backdrop of the IAEA verification formats outlined above that the Federal Government's "incompatibility narrative" also develops. This adopts the position that the TPNW verification regime is insufficient and lags behind the verification standards of the NPT. The next section traces this line of argument.

In terms of the starting point for the argumentation it is to be noted that as a **minimum verification standard** Article 3 TPNW only requires the conclusion of traditional safeguards agreements with the IAEA (*INFCIRC/153/Rev. 2)***.** Article 3 TPNW does *not,* however, require non-nuclear weapon states to adopt **the IAEA's 1997 Additional Protocol**. The TPNW merely ensures that NPT member states that have already adopted the IAEA Additional Protocol continue to implement it.

One could, however, **read into** the wording of Article 3 TPNW ("*at a minimum"*, "*without prejudice to any additional relevant instruments that it may adopt in the future*") an **indirect invitation to the states** to conclude the Additional Protocol and thus adopt higher standards. *Eirini Giorgou*, *legal advisor to the* ICRC and participant in the treaty negotiations, elucidates the background to the treaty negotiations in this context as follows:

> "Proposals were made for a reference to 'stricter standards' and for language 'encouraging' states to upgrade. The fact that both met with strong opposition is indicative of the level of sensitivity among states of this issue. Nevertheless, there was tacit agreement that by "additional relevant instruments" the provision refers to the AP, as well as to potential stricter standards to be developed in the future."

The Federal Government, but also literature on this, heavily criticises and regrets the fact that Article 3 TPNW did not make ratification of the **IAEA Additional Protocol** binding **as the "verification gold standard**", however:

- "Strong safeguards against clandestine nuclear weapon programs are absolutely essential for disarmament to proceed. States will not disarm when other states seen as potential (or actual) proliferators (such as Argentina, Brazil, Egypt, Iran, Saudi Arabia, Syria, Venezuela) have not committed to the strongest form of safeguards. The background to this issue is that within the NPT there are some key states (including those listed above) that have not accepted the Additional Protocol."

- "The fact that the [TPNW] fails to even recommend the Additional Protocol is a step backwards by decades in the area of *safeguards*. It undermines the IAEA's mission and the Additional Protocol especially. Whilst the supporters of the [TPNW] do not seem to deliberately want to weaken the IAEA, some representatives of [TPNW] states admit off the record that the treaty in fact harms the IAEA - a counterproductive development for reducing nuclear risks."

- "Those who have never possessed nuclear weapons get off lightly with 'comprehensive safeguards', that is to say the old standard verification of the NPT of 1972, although the entire world has known since the findings from Iraq in 1991 that this does not allow clandestine fissile material production or direct weapons activities to be detected. Those who have already signed an Additional Protocol, whose measures do allow clandestine activities to be detected, retain this as well as the standard agreement, but these, as said, are not all the parties to the treaty. (…)"

Why the TPNW treaty negotiations in 2017 failed to take the opportunity to make a higher standard - notably the entry into force of the IAEA Additional Protocol - binding, is ultimately probably due to the **political resistance at the UN Diplomatic Conference**. The following explanation can be found in the literature on this:

> "Article 3 was the result of long and strenuous negotiations, and a **compromise between three negotiating factions**: those supporting an explicit reference to the IAEA model Additional Protocol (AP) as the mandatory Safeguards standard required of TPNW States

> Parties; those (few) objecting to such a provision and willing to accept only a reference to the IAEA model Comprehensive Safeguards Agreement (CSA) - an instrument less intrusive in terms of inspections than the Additional Protocol - as the mandatory standard for Safeguards; and a minority according to which the TPNW need not contain Safeguards provisions at all, but that it should be a short, simple, straightforward framework-setting instrument focused on the core prohibitions, to be complemented by existing and future instruments (...).
>
> **Valid arguments** were thus made by states that establishing the AP as the minimum acceptable standard in the TPNW would mean **changing the former's nature from optional to mandatory**, something that would **exceed the mandate of the Negotiating Conference**."

Germany (like the EU as a whole), however, is working hard to ensure that the Additional Protocol is accepted as the "gold standard" in the non-proliferation regime.

The **argumentation put forward by TPNW critics** also assumes that in terms of how the non-proliferation regime is practiced, for most NPT states (currently 136 of 190 states) **a higher verification standard than the IAEA safeguards agreements alone has emerged** de facto. In contrast, the critics go on, Article 3 NPT only mandates a ("minimum") standard, which, in the view of the Federal Government is utterly outdated.

Conclusions differ, however, as to whether the IAEA Additional Protocol is **already** regarded **internationally as the standard** for verifying the peaceful use of fissionable material (*safeguards*). In 2010, the NPT Review Conference determined that the *comprehensive safeguards agreement* in combination with the Additional Protocol is now the "enhanced verification standard" for NPT states and called on NPT states without an Additional Protocol to adopt and bring it into force. The study by the Norwegian Academy of International Law on the Treaty on the Prohibition of Nuclear Weapons, on the other hand, concludes:

> "However, it is *not* the case that the Additional Protocol (AP) is a universally accepted standard. On the contrary, attempts at making the AP mandatory for all states have consistently failed. At the TPNW negotiating conference, efforts to make the AP a universal requirement were rejected by the same group of states that have consistently opposed such moves in the context of the NPT."

Irrespective of this, the Federal Government's criticism cannot be dismissed outright – above all in combination with the fear that states that join the TPNW without having brought the IAEA Additional Protocol into force could "freeze" their verification obligations at the minimum standard laid down in Article 3 TPNW and at any rate potentially have little motivation to ratify the IAEA Additional Protocol as well. If this fear were to be borne out, joining the TPNW could indeed contribute to "undermining" the verification regime of the NPT.

2.6. Relativising the criticism

Several points can be raised to counter the argumentation of TPNW critics:

2.6.1. Synchronous legal obligations under the TPNW and the NPT

The argument that Article 3 TPNW falls short of the NPT verification standard requires certain **qualification**. If one takes (only) Article 3 of the Non-Proliferation Treaty and not the IAEA's verification formats, one finds that the **obligations** of the NPT and the TPNW are legally **in synch**. **The NPT does not require ratification of the Additional Protocol either**. The enhanced verification possibilities afforded by the Additional Protocol which have emerged under the aegis of the IAEA result **neither from an obligation under international law** under the NPT **nor from the non-proliferation regime being cemented as part of customary law** - they are based solely on the **voluntary agreement** of the NPT states. Consequently, all states that have not yet signed the Additional Protocol cannot be forced to do so under international law and instead have to be convinced politically. From a legal perspective, the **verification provisions of the TPNW are on a par with the NPT and at any rate do not lag behind them**.

The "two-class" verification law under the non-proliferation regime may **not be abolished** by the TPNW, but it is **not cemented either:** Joining the TPNW does not legally prevent any state from deciding to also bring the IAEA Additional Protocol into force for itself.

2.6.2. The TPNW as a guarantee of continuity for IAEA verification standards

NPT Member States that have accepted the IAEA Additional Protocol cannot **go back on this** if they accede to the TPNW. Article 3 TPNW clearly states that all verification obligations of the states that already exist at the time of the entry into force of the TPNW shall be maintained.

So Article 3 TPNW **does not allow states to fall short of an already accepted verification standard**. In the literature on this there is the view that by joining the TPNW states **forfeit** the possibility of withdrawing from the Additional Protocol once adopted, meaning in turn that **joining** the TPNM thus constitutes a quasi-legal **guarantee of the continued existence of the IAEA verification standards**. Parts of the literature on this subject even see this guarantee of existence as a **legal improvement compared to** Article 3 NPT:

- "The specific mention of *INFCIRC/153 (Corrected)* in the TPNW **can nevertheless be seen as an improvement from the NPT Article III**, which does **not specify any particular safeguards** standard. Moreover, as noted above, the TPNW **does not allow states parties to downgrade** their existing verification arrangements, and hence it does not undermine the existing Model Additional Protocol agreements which are already in force in 136 countries, should they decide to join the Treaty."

- "Moreover, the Treaty goes beyond the NPT, by obliging States Parties to maintain, as a minimum, their existing Safeguards standards, thus **making the Additional Protocol mandatory for states that are bound by it when the TPNW enters into force**. (...) This caveat was added not only to implicitly **encourage states to upgrade their Safeguards standards by adopting an Additional Protocol**, but also to **accommodate any new, higher standards** that might be elaborated in the future in the context of the IAEA and beyond."

2.6.3. The TPNW's development potential

Given the positive development of the non-proliferation regime in terms of verification law since the NPT entered into force in 1970, one will also have to give the TPNW verification regime a certain period of time to realise its **"development potential"**. For example, Article 7 TPNW creates mutual cooperation obligations "to further the implementation of this Treaty." This could become relevant in light of the fact that the states acceding to the TPNW bring with them verification obligations of varying strictness.

2.6.4. State practice and ratification status

Most of the 51 states that have acceded to the Treaty on the Prohibition of Nuclear Weapons thus far can hardly be accused of not having a serious interest in nuclear disarmament and the prevention of nuclear proliferation.

The argument that joining the TPNW could "undermine" the NPT verification regime by TPNW Member States that have not yet ratified the IAEA Additional Protocol "freezing" their verification standards at a minimum level is ultimately **no more than a fear.** States' future actions are **virtually impossible to predict with any certainty**. At best, one can draw certain conclusions from how states have behaved thus far, for instance by looking at the current **ratification status for the TPNW, the NPT and the IAEA Additional Protocol**:

- All TPNW Member States are also members of the NPT. To date, no NPT Member State has left the NPT since joining the TPNW.

- Out of the current 51 TPNW Member States, the vast majority have also brought the IAEA Additional Protocol into force or at least signed it. For them, the higher verification standard definitely applies. And out of the 35 other states that have signed the TPNW but not yet ratified it (so that are "on hold" so to speak), the majority have already signed the IAEA Additional Protocol or have already brought it into force.

- Out of the 51 TPNW Member States, (only) 10 states have yet to even sign the IAEA Additional Protocol. So here it cannot be ruled out that this group of states might "freeze" their verification obligations at the minimum TPNW standard. It is also possible, however, that they will bring the Additional Protocol into force later. Putting this into perspective, though, this group of states almost exclusively comprises small island states that may possibly have joined the TPNW for symbolic reasons only.

- Venezuela, however, is a real "problem case" on this front. The state, whose name comes up in connection with proliferation, is a member of the NPT and since 2018 has also joined the TPNW, but has neither signed nor ratified the IAEA Additional Protocol.

- Other NPT states suspected of engaging in proliferation (*inter alia* cited as Argentina, Brazil, Egypt, Iran, Saudi Arabia or Syria) and in this sense constituting a special challenge for the NPT community, have not signed the IAEA Additional Protocol and in all probability will not join the TPNW either (only Brazil has at least signed the TPNW).

The proliferation "woes" of this group of states will evidently neither improve nor worsen as a result of the existence of the TPNW.

- The five NPT states that have yet to even accept the standard safeguards agreements (let alone the Additional Protocol) – so the NPT "pariahs", as it were, alongside North Korea - have at least signed the TPNW, though. If they go on to ratify the TPNW, the IAEA safeguards agreement would be the minimum standard for these states. International law pressure would then come from two sides (from the NPT and the TPNW) as it were. TPNW membership would have a complementary effect for this group of states. From a proliferation perspective, they are probably of negligible importance.

As a result, the fears articulated by critics of the TPNW can **hardly be empirically corroborated.**

2.7. Verification provisions for nuclear sharing states

Nuclear sharing by TPNW Member States is fundamentally inconsistent with the Treaty on the Prohibition of Nuclear Weapons. In the Federal Government's view, this - at least legally speaking - is the greatest obstacle to Germany joining the TPNW. Article 1 lit. g) TPNW obliges States Parties not to allow the **stationing, installation or deployment of nuclear weapons on their territory** under any circumstances. Article 1 lit. c) TPNW further prohibits non-nuclear weapon states from "receiving the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly". Both obligations describe key elements of nuclear sharing.

Article 4 (4) TPNW adds a procedural component to the substantive obligations of nuclear sharing states:

> Each State Party that has any nuclear weapons or other nuclear explosive devices **in its territory that are owned, possessed or controlled by another State** shall ensure "the **prompt removal** of such weapons, as soon as possible but not later than a deadline to be determined by the first meeting of States Parties. Upon the removal of such weapons or other explosive devices, the State Party shall submit to the Secretary-General of the United Nations a declaration that it has fulfilled its obligations under this Article."

Purely in terms of time, Article 4 (4) TPNW leaves a **wide backdoor open** to nuclear sharing states wishing to join the TPNW. A nuclear sharing state is **in no way** required to **immediately** ban all nuclear weapons from its territory, but only to ensure their "prompt removal". The treaty requires this "as soon as possible", but no later than by a deadline to be set by a majority vote at the review conference of the states parties. Theoretically at least, this deadline could be a relatively **long time coming**. This relativises to some degree legal concerns towards Germany acceding to the TPNW. The "concession" contained in Article 4 (4) TPNW can, however, also be interpreted as an indication that the treaty does **not deem** at least the **temporary possession of nuclear weapons to be in contravention of international law**. *Christopher Ford, Special Assistant to the President of the United States*, explained this as follows to the Carnegie Endowment in 2017:

> "Moreover, the 'ban' document itself also demonstrates that there is no legal norm of non-possession of nuclear weapons, for its very text contradicts the idea that nuclear weapons possession is *per se* unlawful. The 'ban' contemplates that countries may join it while still possessing nuclear weapons, or while having such weapons stationed in their territory. They would only have to eliminate such things pursuant to deadlines that are not set in the treaty itself and that would have to be determined by a meeting of States Party subsequent to their accession to the treaty."

This circumstance is important because it counters a possible cementing of TPNW obligations under customary international law - such as the prohibition of the storage of nuclear weapons on a state's own territory.

2.8. Verification provisions for nuclear weapon states

The verification mechanisms the TPNW sets forth for nuclear weapon states have a **different thrust than the NPT** - the aim, after all, being to "eliminate" the nuclear weapons programme verifiably and irreversibly, to suspend the operational readiness of nuclear weapons and to destroy them "as soon as possible" (Article 4 (2) TPNW).

Under Article 4 (3) TPNW, the nuclear weapon states are required to agree on a timetable for the implementation and monitoring of the disarmament of their nuclear weapons and related facilities with a "*competent authority*" yet to be created. An agreement is then to be concluded with the IAEA that is capable of detecting both the diversion of fissile material from the civilian fuel cycle and clandestine activities - this equates to a verification standard on a par with the IAEA Additional Protocol. Whether this procedure will stand up in practice remains to be seen.

Given the nuclear weapon states' declared resistance to the TPNW, which also oppose any **cementing of the TPNW under customary law**, a **large part of the TPNW verification regime** relating to the oversight of nuclear weapon states will remain **inapplicable for the time being at any rate.**

3. On the relationship (or tension) between the TPNW and the NPT

3.1. Relevant legislation

The TPNW refers to the Non-Proliferation Treaty on two occasions. Paragraph 18 of the **preamble** of the TPNW first affirms,

> "that the full and effective implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, which serves as the cornerstone of the nuclear disarmament and non-proliferation regime, has a vital role to play in promoting international peace and security."

The preamble of the TPNW not only acknowledges the importance of the NPT as a pillar of nuclear non-proliferation, but also reflects the will of the negotiating states to design both treaties to be fully complementary. *Thomas Hajnoczi*, head of the Austrian Delegation to the TPNW treaty negotiations, comments as follows on this:

> "The preambular already reflects the high importance that the negotiators of the TPNW have accorded to the NPT and, in particular, to securing full complementarity between the two treaties. The NPT was never meant to be a comprehensive regulation of all aspects that were indispensable for the peaceful uses of nuclear energy, non-proliferation, and nuclear disarmament."

In - apparent - contradiction to the statements in the preamble is **Article 18 of the TPNW**, which specifically addresses the **Treaty on the Prohibition of Nuclear Weapons' relationship with other international law agreements:**

> "The implementation of this Treaty shall not prejudice the obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the Treaty."

The interpretation of Article 18 TPNW appears to be **highly controversial**. Some interpret Article 18 TPNW as **proof of the fundamental consistency** of obligations under the TPNW with other, already existing treaties ("*shall not prejudice")*; others read a **ranking** into the norm, which subordinates the NPT to the TPNW:

> "This hierarchy can become practically relevant if the two treaties clash with each other. Should, for instance, efforts to make the Additional Protocol the binding standard for NPT members be successful, there would be differing requirements for the parties to the two treaties.
>
> Then the hierarchy could support the argument that in the event of dispute, the higher-ranking legal norm of the [TPNW] would prevail. In the worst-case scenario, this hierarchy could serve as an excuse to withdraw from the more inconvenient NPT and only be party to the [TPNW]."

The next section examines the **relationship between the TPNW and the NTP** in **greater depth.**

3.2. Supplementary relationship

In the literature on this, various authors have highlighted that the far-reaching disarmament obligations under the Treaty on the Prohibition of Nuclear Weapons do not call the provisions of the NPT into question, but on the contrary **supplement and implement** them, as the example of the controversial disarmament obligation in Article 6 NPT illustrates. The norm reads:

> "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to the 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."

Contrary to other interpretations, Article 6 NPT **does not** contain **a traditional disarmament obligation**, but - in accordance with the legal interpretation of the ICJ - establishes a *pactum de contrahendo,* that is to say a *twofold obligation,* consisting of pursuing negotiations on nuclear disarmament in good faith, concluding them and achieving an outcome. The outcome is not predetermined *in concreto.*

In the international law literature - but probably also in state practice - there is agreement that full implementation of Article 6 NPT **requires legally binding regulation** to ban nuclear weapons, as the goal of a world without nuclear weapons can hardly be achieved otherwise. Experience with other disarmament treaties has shown, so the argument, that the prohibition norm must precede and be followed by the disarmament of weapons - but that this does not work the other way round. The TPNW adopted by 122 states on 7 July 2017, draws on this approach and to a certain extent continues the obligations of Article 6 NPT. Paragraph 17 of the TPNW preamble reads:

> "*Reaffirming* that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects and under strict and effective international control."

The literature floats the idea of viewing the TPNW less as a "threat" to the NPT and more as the **fulfilment of an obligation developing under customary law from Article 6 NPT**: "Rather than undermining the NPT, the TPNW could potentially be interpreted as the fulfilment of Articles 6 and 7 of the treaty."

3.3. No expansion of possibilities to withdraw from the treaty

Article 18 TPNW **does not exempt any Member State of the Treaty on the Prohibition of Nuclear Weapons from complying** with its obligations under other treaties to which it is a party.

Article 18 TPNW in no way expands the **derogation or withdrawal possibilities** contained in other international treaties. The study by the Norwegian Academy of International Law on the Treaty on the Prohibition of Nuclear Weapons notes that ratification of the Treaty on the Prohibition of Nuclear Weapons "by no means alters the requirements for withdrawal from the NPT, nor does it offer states a legal pretext to exit from the NPT."

It must be noted here that all states that have joined the TPNW in the last few years are also party to the NPT. So it is a **cumulative**, not **alternative membership practice** that is to be observed**.** So far, no TPNW Member State has indicated that it is contemplating leaving the Non-Proliferation Treaty as a result of its accession to the TPNW. Disarmament experts at the *Stockholm International Peace Research Institute* (SIPRI) hold the view that joining the TPNW would not be the deciding factor in such a (hypothetical) scenario at any rate. What is more, withdrawing from the NPT is not as simple legally as the "incompatibility narrative" would have us believe.

The **withdrawal regimes** of both treaties differ in detail. Under Article 17 (3) TPNW, a TPNW Member State may only withdraw from the treaty after a **notice period of one year**. If it is party to an armed conflict during this period, its membership of the TPNW does not end until the end of the conflict. The Non-Proliferation Treaty, on the other hand, can be withdrawn from **with a notice period of only three months**; however, this notice must be given to **all other parties to the treaty as well as to the UN Security Council.** Withdrawal from the TPNW, in contrast, is **possible** after giving notice - with considerably less publicity – **only to the UN Secretary-General as Depositary** (Article 19 TPNW), who would not even be legally obligated to pass on this information to the international community.

Both withdrawal clauses (Article 10 NPT and Article 17 TPNW) require the state wishing to withdraw to explain the circumstances (*extraordinary events related to the subject matter of the treaty*) on which withdrawal from the treaty is based. It is not defined what these circumstances might be. In a very narrow interpretation of Article 17 TPNW, *Christopher Ford*, *Special Assistant to the President of the United States*, made the case to the Carnegie Endowment in 2017 that a withdrawal under Article 17 TPNW would ultimately probably only be permitted in the event of a nuclear attack by a state against the state wishing to withdraw.

Treaty exit clauses governing the withdrawal of a Member State from the treaty and potentially making this more difficult have a **treaty-stabilising effect**. But, additionally, they may also **be relevant in terms of the domestic acceptance of an international treaty**.

Newell Highsmith, former *Legal Advisor* to the US State Department, has made it clear that "this kind of clause has been essential to obtaining US Senate consent to ratification of the NPT". A supposedly "stricter" withdrawal clause may on the one hand have a stabilising impact on the treaty, but on the other it can also "scare off" states or take a negative toll on the ratification process. This is often not acknowledged when the withdrawal clauses of the TPNW and NPT are compared with one other.

Under the withdrawal clause in Article 17 (3) TPNW, the 12-month period is extended if the state wishing to withdraw is party to an "armed conflict". This wording is considered extremely problematic, as the text of the treaty does not specify whether internal conflicts ("civil wars") or the "war on terror" propagated by the US are also supposed to come under the withdrawal provision. It is also unclear whether the aim of Article 17 TPNW is membership "*ad infinitum*", if a state wishing to withdraw from the treaty becomes involved in a new conflict after the end of one conflict, in which it may only be defending itself. Ambiguities of this kind may certainly end up "scaring off" states potentially wishing to join.

Treaty withdrawal clauses - like other treaty provisions – need to first stand the test of practice. In this context, the **precedence of North Korea** demonstrates **how difficult it is for the international community to deal with an NPT Member State wishing to withdraw**. At the same time, the case of North Korea relativises the fears of some critics of the NPT that a withdrawal from the NPT could lead other NPT member states to follow suit.

In 2003, North Korea gave notice of its withdrawal from the NPT only to the UN Security Council – so first and foremost to the other nuclear powers - but not to all the other states parties to the

NPT, which raised doubts (*inter alia* on the part of Germany) as to the formal validity of the notice of withdrawal. These doubts flared up at the annual meeting of the NPT Member States: In the view of the French and British delegations, North Korea had already violated the NPT *before* giving notice of withdrawal. The withdrawal clause had not, however, been put in place to leave a "loophole" for treaty-breakers to simply leave the treaty, they argued, Article 10 NPT only being intended for extraordinary events. At the NPT meeting on 28 April 2003, a "Solomonic solution" was found diplomatically, as *Thränert* from the Stiftung Wissenschaft und Politik reported: Given the ambiguous stance of the delegations present, the Hungarian chair of the negotiations, *László Molnar,* decided to take North Korea's name tag and keep it in his desk so that it remained in the conference room, in order to make it clear that North Korea's notice of withdrawal from the treaty had not been fully accepted diplomatically. The *UN Office for Disarmament Affairs* states to this very day that "State parties to the Treaty continue to express divergent views regarding the status of the Democratic People's Republic of Korea under the NPR."

3.4. No progress in the settlement of disputes

Like the Non-Proliferation Treaty, the TPNW does not contain any effective provisions governing how to proceed in the case of violations of the treaty. The **dispute settlement procedure** set forth in Article 11 TPNW largely rests with the parties to the dispute; the treaty community as a whole at best acting as a mediator in this procedure without any decision-making or sanctioning powers of its own. The matter of "treaty compliance", which the NPT already failed to clarify, is not resolved by the TPNW.

3.5. Conflicting obligations

The **regulatory content** of Article 18 TPNW above all covers **conflicts of law** between the TPNW and other treaties. Article 18 TPNW adopts almost word for word the somewhat muddled conflict rule from **Article 26 (1) of the Arms Trade Treaty** of 2 April 2013 here. Such conflict of law provisions are not unusual in international treaty law. A more concise provision than the one in Article 18 TPNW can be found, for instance, in **Article 103 of the UN Charter:**

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, the obligations under the present Charter shall prevail."

3.6. Primacy of obligations

Unlike Article 103 of the UN Charter, Article 18 TPNW does **not expressly** order **primacy of the obligations under the TPNW** over other treaties. Article 18 TPNW merely **ensures the implementation of the TPNW** in such a way that in the event of inconsistency (between two treaties), this shall not (cannot) be without prejudice to the obligations under the other treaty. The conflict between the conflicting obligations from two different treaties does **not necessarily** have to be resolved **by a primacy of the TPNW.** Article 18 TPNW gives the states more latitude to resolve such a conflict than the provision in Article 103 of the UN Charter. The general **"higher ranking" of the TPNW over the NPT**, sometimes concluded in the literature on this, can only be underscored to a limited degree at any rate.

The **key word** in Article 18 TPNW is '**consistency'** (*consistent with*). "Consistent with" does not mean the same as "identical to". Rather, the concept of 'consistency' gives the states broad discretionary latitude in practice. Two obligations stemming from different treaties may be inconsistent if, for instance, they pursue conflicting aims. But they can also be inconsistent if **one obligation is more restrictive than another with regard to the same subject matter.** In the relationship between the TPNW and another treaty, this means that any further-reaching obligations under the TPNW cannot be relativised or nullified by a state invoking the less restrictive obligations under another treaty. In this respect – unsurprisingly - the primacy rule of Article 18 TPNW applies. *Casey-Maslen* therefore rightly notes that Article 18 TPNW in many ways is little more than a *statement of common sense.*

General international law does not give rise to a primacy of the TPNW over the NPT **either**. Under Article 30 (4) of the Vienna Convention on the Law of Treaties, in the relationship between states that have ratified both the Treaty on the Prohibition of Nuclear Weapons and the Non-Proliferation Treaty and states that are only members of the NPT, only the NPT applies. Article 30 (2) of the Vienna Convention on the Law of Treaties (VCLT), which sets out provisions governing the application of two successive treaties on the same subject matter, thereby establishing an order of precedence, does *not* apply to the relationship between the TPNW and the NPT.

3.7. Article 18 TPNW and the "incompatibility narrative"

Article 18 TPNW does not, however, contain provisions for the - hypothetical - case in which the stricter obligations or higher standards are not enshrined in the TPNW but rather in another treaty. The "incompatibility narrative", which assumes that the TPNW poses the risk of "undermining" NPT standards, insinuates such a case, though.

It is unclear how Article 18 TPNW would be interpreted in such a case. Article 31 (1) of the Vienna Convention on the Law of Treaties (VCLT) stipulates that an international treaty is to be interpreted "in the light of its object and purpose". The wording of the preamble attests to the fact that one of the stated aims of the Treaty on the Prohibition of Nuclear Weapons is to achieve the most far-reaching nuclear disarmament obligations possible and the highest possible level of control. It is obviously not the aim of the TPNW to undermine or weaken existing control standards. Subsequently there is a good case for interpreting Article 18 TPNW as *supporting* a higher standard of control in the case of doubt.

The conflict of law rule under Article 18 TPNW and **interpreting it as *supporting* a higher standard of verification** could become relevant, for instance, when it comes to a state joining the TPNW that has concluded a *comprehensive safeguards agreement* which is **restricted** by a *small quantities protocol*. The question arises here as to whether Article 3 TPNW obligates this state to **fully apply the safeguards agreement.** This would be the case in light of Article 18 TPNW.

Aside from this, **inconsistencies between the TPNW and the NPT** are likely to remain the exception in practice. The study by the Norwegian Academy of International Law on the Treaty on the Prohibition of Nuclear Weapons notes:

> "In practice however, it is difficult to see precisely what those inconsistencies would be. TPNW negotiators did a thorough job in making sure that the two treaties would be perfectly compatible with each other."

4. Summary

The relationship between the Treaty on the Prohibition of Nuclear Weapons and the Non-Proliferation Treaty is very clearly **better than its reputation**. While doubts about the legal compatibility of the TPNW and the NPT are expressed and nurtured above all by representatives of states critical of the TPNW and by government-linked *think tanks* and disarmament experts, the great bulk of international law literature - including proven experts in the field of *international disarmament law* from universities and research institutes, but above all also participants (diplomats and *academics*) at the UN Diplomatic Conference which negotiated the TPNW - come to the conclusion that the two treaties are in a **complementary rather than a competing legal relationship**.

In concrete terms this means that the TPNW does **not legally contradict the NPT**. The legal "update" contained in the TPNW lies above all in the fact that - in contrast to the NPT - it **contains concrete disarmament obligations** and **delegitimises the strategy of nuclear deterrence**. It is this treaty purpose that the hopes of numerous states that have joined the TPNW in recent years are obviously pinned on.

The TPNW does not undermine the NPT, it is **part of a common nuclear disarmament architecture**. So the TPNW is not an obstacle to nuclear disarmament, if only the NPT states had the requisite political will. Within the scope of this architecture, Article 18 TPNW is intended to safeguard the *acquis* of the TPNW vis-à-vis other nuclear treaties. If conflicting obligations from different treaties prove inconsistent, a solution must be found, whereby the higher standard of control generally prevails, as per the intention of the TPNW.

This makes it clear that Article 18 TPNW **does not** establish an **explicit relationship of primacy** of the TPNW at the expense of the NPT. Existing obligations of states under the NPT are **neither nullified nor relativised** by joining the TPNW.

Even NATO concedes this in its most recent comments on the TPNW: "The ban treaty will not change the legal obligations of our countries with respect to nuclear weapons." Perhaps the realisation is dawning here that the Treaty on the Prohibition of Nuclear Weapons does not intend to be nor will it be the "gravedigger" of the non-proliferation regime.

Nevertheless, narratives often prove persistent. Consequently, the legal but also political debate on the questions raised will - and must - continue. Above all, it remains to be seen how **states behave** when they accede to the TPNW and / or bring the IAEA Additional Protocol into force (or refrain from doing so) in the future. Higher verification standards will be difficult to implement against the will of states. International law - in the form of the TPNW and NPT - (only) creates the **legal scope, possibilities and incentives**; it is the states themselves that have to make the decisions. Current state and ratification practice does *not* indicate that membership of the TPNW

is being used to weaken or undermine the NPT verification regime. Some fears that feed the "incompatibility narrative" may ultimately prove to be baseless.

On the other hand, it seems important to bring fresh impetus to deadlocked debates. This study is **by no means intended as a plea for Germany to accede to the Treaty on the Prohibition of Nuclear Weapons**, but rather - to use the *rationale* of Article 6 NPT - as a plea for the continuation of an open-ended discourse. The **legal relationship between the TPNW and the NPT**, which plays a role in this discourse, is – in the conclusion of this study - potentially more "compatible" **than the "incompatibility narrative" would have us believe.**

Eirini Giorgou, legal advisor to the International Committee of the Red Cross and participant in the negotiations on the Treaty on the Prohibition of Nuclear Weapons, closes with words that are as pragmatic as they are powerful:

> "Let's end with some universally acknowledged truths. [...] The TPNW is now a reality. Despite its shortcomings, it shook the stagnating waters of nuclear disarmament. Instead of engaging in futile debates in favour or against it, states should join forces to maintain, and strengthen, this momentum [...]. The problem is, we may be running out of time."

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