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# Japan and the Nuclear Weapons Prohibition Treaty: the wrong side of history, geography, legality, morality, and humanity

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## ABSTRACT

By refusing to sign the new UN Nuclear Weapons Prohibition Treaty, Japan has put itself on the wrong side of history, geography, legality, morality, and humanity. The treaty is part of the broad historically progressive trend since 1945 to limit and abolish nuclear weapons and their use. The normative architecture includes the Non-proliferation Treaty (NPT), the Comprehensive Test Ban Treaty, the Nuclear Suppliers Group, regional nuclear weapon-free zones, the Proliferation Security Initiative, and the International Atomic Energy Agency. Geographically, global nuclear risks and threats exist in especially acute form in the Asia-Pacific and most states of the region voted solidly for the ban treaty. The NPT's legal obligation to eliminate nuclear weapons was strengthened by the World Court's Advisory Opinion in 1996. Most countries and peoples of the world overwhelmingly abhor the bomb as deeply immoral. The ban treaty expresses their collective moral revulsion and is rooted in humanitarian principles.

## ARTICLE HISTORY

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As of 2017, two of three classes of weapons of mass destruction (WMD) had been banned by the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention. But despite – or perhaps because of – the existence of the 1968 Nuclear Non-proliferation Treaty (NPT) for a considerably longer period, there is still no equivalent nuclear weapons convention (NWC) to complete the legal prohibition on all WMD. Nuclear weapons were invented to pre-empt Germany, used to defeat Japan, and deployed most extensively against the former Soviet Union. The near-universal NPT is the mother-lode of all nuclear treaties and informal arrangements that has kept the nuclear nightmare at bay for five decades while underpinning and facilitating the global trade in nuclear material for peaceful purposes. It permitted five countries (China, France, Russia, UK, and USA: the N5) to keep nuclear weapons but obliged them to work to eliminate them through negotiations and prohibited their acquisition by anyone else.

Meeting in New York under the auspices of the United Nations, in a historic vote on July 7, 2017, 122 NPT states parties adopted the Nuclear Weapons Prohibition Treaty (NWPT). The most significant multilateral development on nuclear arms control since the adoption of the NPT, the NWPT bans the acquisition, development, production, manufacture, possession, transfer, receipt, testing, extra-territorial stationing, and use

and threat of use of nuclear weapons (UNGA 2017). Opened for signature in the UN General Assembly (GA) on September 20, it was signed by 50 states the same day and will enter into force 90 days after 50 states have ratified it.

Increasingly disenchanted with the recalcitrance of the nuclear weapon states (NWS) on disarmament, two-thirds of NPT parties have proven that serious negotiations can produce an acceptable nuclear disarmament text in less than four weeks of multilateral negotiations conducted in good faith and with goodwill. But the one-third of absentees from the conference included all countries that possess nuclear weapons, plus the approximately 30 US NATO and Pacific allies.<sup>1</sup> In their view, the NWPT risks jeopardizing international security by damaging the NPT and undermining nuclear deterrence. As well as constituting a strong and significant minority, these include some of the best UN citizen states. Their boycott of the conference and rejection of the NWPT points to the considerable potential for tension and conflict between the two treaties. This is the first time that the NPT and the UN have diverged on global nuclear policy. The already fraying normative consensus around the NPT as the embodiment of the global nuclear order and the framework for setting global nuclear policy directions has been broken.

After the treaty's adoption, in a joint press statement, the ambassadors of the three Western NPT-licit NWS – USA, UK, and France – said they had neither taken part in the negotiation of the treaty, nor did they “intend to sign, ratify or ever become party to it.” For the treaty “is incompatible with the policy of nuclear deterrence, which has been essential to keeping the peace in Europe and North Asia for over 70 years.”<sup>2</sup> In an unclassified NATO document on 17 October 17 2016, Washington had urged allies to vote against holding the negotiations and not to take part in any negotiations that were convened because “efforts to negotiate an immediate ban on nuclear weapons or to delegitimize nuclear deterrence are fundamentally at odds with NATO's basic policies on deterrence and our shared security interests.” Yet the document conceded that “The effects of a nuclear weapons ban treaty could be wide-ranging.”<sup>3</sup>

US allies dutifully joined the nuclear-armed countries to boycott the UN conference, describing it as impractical, ineffective, and unrealistic. Japan walked out after delivering a sharply critical opening statement. Foreign Minister Fumio Kishida said the negotiations “could further deepen the rift between nuclear and nonnuclear-weapon states and cause an adverse effect.”<sup>4</sup> This left Japan's atomic bomb survivors, the *hibakusha*, “heartbroken.”<sup>5</sup> The argument of this article is that in rejecting the ban treaty, Japan put itself on the wrong side of history, geography, legality, morality, and humanity. Japan is the emotional touchstone of nuclear weapons policy. Its stance on the UN ban treaty is not just a deeply flawed misreading of international sentiment; it is also a deep betrayal of Japan's own history, legacy, and people. Although I focus on Japan, most arguments apply equally to all nuclear-weapon-possessing countries and allies who shelter under their nuclear umbrella.

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<sup>1</sup>The Netherlands attended the conference on directions from its parliament but voted against the treaty.

<sup>2</sup><https://usun.state.gov/remarks/7892>.

<sup>3</sup>[http://www.icanw.org/wp-content/uploads/2016/10/NATO\\_OCT2016.pdf](http://www.icanw.org/wp-content/uploads/2016/10/NATO_OCT2016.pdf).

<sup>4</sup>Kyodo News Service, “Japan abstains as nuclear arms ban treaty talks start at UN,” *Japan Times*, March 28, 2017, <http://www.japantimes.co.jp/news/2017/03/28/national/japan-abstains-talks-start-u-n-nuclear-arms-ban-treaty/#.WNsCzCN97q0>.

<sup>5</sup>“Hibakusha ‘heartbroken’ over Japan's opposition to nuke ban treaty,” *Mainichi*, March 28, 2017, <https://mainichi.jp/english/articles/20170328/p2a/00m/0na/020000c>.

## Context: five paradoxes

Former US Defence Secretary William Perry has warned that “the danger of a nuclear catastrophe today is greater than during the Cold War” (quoted in McManus 2016). The nuclear peace has held so far owing as much to good luck as sound stewardship (Lewis et al. 2013; Schlosser 2013). Nuclear weapons endanger international security more than they provide national security, but possessor states are trapped in the prism of basing nuclear policies on national calculations only.

Five paradoxes set the context for the global nuclear arms control agenda and are at the heart of the NPT–NWPT divide. First, nuclear weapons are useful for deterrence only if the threat to use them is credible, but they must never be used if deterrence fails, because any use will only worsen the devastation for everyone. Second, they are useful for some (those who have them) but, illogically, must be stopped from spreading to anyone else. Third, the most substantial progress on dismantlement and destruction of nuclear weapons has occurred as a result of bilateral US and Soviet/Russian treaties, agreements, and measures. But a nuclear-weapon-free world will have to rest on a multilateral international instrument such as a universal, non-discriminatory NWC. Fourth, the existing treaty-based regimes have collectively anchored international security and can be credited with many major successes and significant accomplishments. But their accumulating anomalies, shortcomings, and flaws suggest that some of them may have reached the limits of their success. Finally, there are far fewer nuclear weapons today than during the Cold War; they play a lesser role in shaping relations between Moscow and Washington and the risk of a nuclear war between them is low.<sup>6</sup> Yet the overall risks of nuclear war have grown – as more countries in more unstable regions have acquired these deadly weapons, terrorists continue to seek them, and command and control systems remain vulnerable to human error, system malfunction, and cyberattack.

The first nuclear age was conditioned by the bipolar Cold War rivalry, the competitive nuclear arms buildup and doctrines of the two superpowers, and the development of relatively robust mechanisms for maintaining strategic stability. The second nuclear age (Bracken 2012; Yoshihara and Holmes 2012) is characterized by a multiplicity of nuclear powers with criss-crossing ties of cooperation and conflict, the fragility of command and control systems, threat perceptions between three or more nuclear-armed states simultaneously, and the resulting greater complexity of deterrence relations between the nine nuclear-armed states. Changes in the nuclear posture of one can generate a cascading effect on several others. For example, the nuclear relationship between India and Pakistan is historically, conceptually, politically, strategically, and operationally deeply intertwined with China as a nuclear power. The boundaries between nuclear and conventional weapons, tactical and strategic warheads, and nuclear, cyber and space domains are also eroding.

While the NPT served the international community very well during the first nuclear age, it has proven to be less fit for purpose for the second nuclear age. Its normative potential to contain and eliminate the nuclear threat has been exhausted. All countries that have them betray the intention to retain them indefinitely. Alexei Arbatov wonders if nuclear arms control has reached its own end of history. Almost all negotiations on

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<sup>6</sup>However, the flare-up of geopolitical tensions over Ukraine in 2014 heightened the danger of an unintended nuclear war (Berls and Ratz, 2015).

nuclear arms reductions and non-proliferation have stalled and non-proliferation norms are softening, “existing treaty regimes are eroding and...may collapse in the near future.” With “the total disintegration of the existing framework of treaties and regimes,” he warns, the risks of and plans for the use of nuclear weapons in combat will return to prominence (Arbatov 2015, 3, 22).

## History

Along with an interest in the normative framework for going to war and regulating the conduct of belligerents engaged in hostilities, analysts and policymakers have long been interested in regulating the weapons of warfare. Article 8 of the League of Nations Covenant required “the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.” The UN Charter made the Security Council responsible for formulating “plans...for the establishment of a system for the regulation of armaments” (Article 26). The Charter was signed two months before the first use of atomic weapons, and the first GA session was held two months after. The sheer destructiveness of the new type of weaponry had a profound conditioning impact on the world. Every government and all peoples became stakeholders in the nuclear peace and demanded a voice in the governance of the nuclear order, in effect insisting that there be no annihilation without representation. The UN provided a global platform for articulating this demand. In addition, several governments of non-nuclear states decided to draw “red lines” by creating nuclear exclusion zones on their own.

The very first GA resolution on 24 January 1946 called for the newly established UN Atomic Energy Commission to make proposals for the elimination of all WMD (Rydell 2009). Ever since, activists, NGOs, governments, and the UN have been relentless in putting in place planks of an increasingly rigorous normative architecture to limit the spread of nuclear weapon technology, materials, and arsenals. The Antarctic Treaty (1959) demilitarized and denuclearized the uninhabited continent, followed by the Treaty of Tlatelolco (1967) that established the world’s first nuclear-weapon-free zone (NWFZ) in an inhabited region in Latin America, and the NPT in 1968. The 1978 first Special Session on Disarmament was a historic landmark that registered international consensus on the priority to be given to the goal of nuclear weapons elimination.<sup>7</sup> Additional planks include the Comprehensive Test Ban Treaty (CTBT) following earlier successes in proscribing atmospheric and underground testing; the Nuclear Suppliers Group set up after India’s testing breakout in 1974; regional NWFZs (Thakur 1998) that cover the southern hemisphere and extend to a limited extent into the northern hemisphere in Central Asia and Mongolia; the Proliferation Security Initiative; so on. In addition, the International Atomic Energy Agency (IAEA) acts as the UN’s nuclear watchdog to ensure compliance with non-proliferation obligations, along with establishing safety and security standards.

Moscow and Washington as the two superpowers led the way both in advances and setbacks. The USA presented the Baruch Plan for the international control of atomic energy in 1946, which led eventually to the establishment of the IAEA. The first

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<sup>7</sup><https://www.un.org/disarmament/topics/ssod/>.

proposal for a “standstill agreement” on nuclear testing came from India in 1954. The western allies submitted a working paper to the UN in 1957 for a halt to nuclear testing and the initiation of a reduction in nuclear weapons stockpiles. Of greater import were a series of bilateral nuclear arms control agreements following the Strategic Arms Limitations Talks begun in Helsinki in 1969: the Anti-Ballistic Missile (ABM) Treaty (1972), the Intermediate Range Nuclear Forces (INF) Treaty (1987), the Strategic Arms Reduction Treaty (START, 1991 and 1993), and New START (2010). Meanwhile, the US Congress passed the Nunn–Lugar Soviet Nuclear Threat Reduction Act to help Moscow destroy nuclear, chemical, and other weapons.

The Partial Test-Ban Treaty (1963) outlawed atmospheric, space, and underwater nuclear testing. The Threshold Test-Ban Treaty (1974) outlawed underground tests of more than a 150-kt yield. The 1996 CTBT banned all but subcritical nuclear tests. The CWC banned chemical weapons, the NPT was extended indefinitely and unconditionally in 1995, and the 2000 NPT Review Conference contained an ambitious forward-looking agenda. In 2009 President Barack Obama outlined his vision of a nuclear-weapon-free world in a landmark speech in Prague.<sup>8</sup>

In other words history has moved in one direction only, albeit in a jagged rather than linear progression, to limit and seek to end the existence of nuclear weapons and their use. The NWPT is part of that historically progressive trend.

## Geography

Four of the world’s nine nuclear weapons possessor countries are in Asia which contains states with the full spectrum of nuclear weapon status in relation to the NPT: one NPT-licit NWS (China), two non-NPT nuclear-armed states (India, Pakistan), the world’s only NPT defector state (North Korea), three umbrella states (Australia, Japan, South Korea), and a vast majority of non-NWS. Russia and the USA also have massive geographical footprints in the Pacific. Asia is the only continent where nuclear warhead stockpiles are growing. North Korea’s unchecked nuclear ambitions could in turn trigger a cascade of proliferation right through the sub-region with the sole exception of Mongolia which has enshrined its nuclear-free status in national legislation (Enkhsaikhan 2017). Asian states hold asymmetric perceptions of the military and political utility of nuclear weapons, with China and India having declared no-first-use (NFU) policies because they foresee political more than military utility in nuclear weapons. Asia is the scene of simultaneous, long-running, and major territorial disputes between nuclear powers, for example, China, India, and Pakistan. Simultaneous threat perceptions between three or more nuclear-armed states have produced a transformation of the Cold War nuclear dyads into interlinked nuclear chains today (Einhorn and Sidhu 2017).

## Nuclear testing

The CTBT has been signed by 183 countries and ratified by 166. This leaves 8 out of 44 Annex 2 countries whose ratifications are needed to bring it into force. Four holdouts are Asian: China, India, North Korea, and Pakistan. Since the treaty’s adoption in 1996,

<sup>8</sup>White House, “Remarks by President Barack Obama in Prague as Delivered,” April 5, 2009, <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-barack-obama-prague-delivered>.



the handful of nuclear tests have all been in Asia. Meanwhile, Pakistan has consistently blocked the adoption of any program of work in the CD in Geneva on a fissile materials cut-off treaty. The NWPT Preamble talks of “the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons.” It stipulates that

Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated (Article 6.2).

This is especially relevant for the Asia-Pacific which has been the site of seven different sets of nuclear tests carried out by four NWS and three non-NPT nuclear-armed states for over 70 years.<sup>9</sup> Witnessing the first successful atomic test on 16 July 1945, Robert Oppenheimer, Director of the Manhattan Project that developed the A-bomb, recalled the sacred Hindu text, the Bhagvad Gita: “If the radiance of a thousand suns were to burst at once into the sky, that would be like the splendour of the mighty one.” Birth and death are symbiotically linked in the Hindu cycle of life. So Oppenheimer recalled too the matching verse from the Gita: “Now I am become Death, the destroyer of worlds” (Jungk 1958, 201).<sup>10</sup>

The USA acquired atomic weapons in 1945 and the Soviet Union in 1949. More than 315 tests were conducted across the Pacific over five decades by the USA, UK, and France. To this total can be added 45 Chinese, 6 Indian and Pakistani each, and 6 North Korean nuclear tests. But at least the last four have conducted tests on their own territories. From 1946–1958, the USA carried out 67 surface, atmospheric, and underwater tests at Bikini and Enewetak Atolls in the Marshall Islands. Although the inhabitants had been promised they would be allowed to return after the tests were over, the atoll proved uninhabitable and the USA paid them \$125mn in compensation. In the 1960s, the USA conducted a further 25 tests at Christmas Island and Johnston Atoll in the Pacific.

Between 1956 and 1963, Britain conducted seven nuclear tests at Maralinga in South Australia. The McLelland Royal Commission reported in 1985 that significant radiation hazards still existed at several test sites. The local Aboriginal population was particularly badly affected (Arnold and Smith 2006). The UK also conducted tests in the Montebello Islands and at Emu Field in Australia, as well as in its Pacific colonial territories in the Gilbert and Ellice Islands. From 1966–1996, France conducted 193 atmospheric and underground tests at Moruroa and Fangataufa atolls in French Polynesia (Thakur 1996).

On the Asian mainland, China conducted 45 nuclear tests in 1964–1996 at four separate sites in Lop Nor. India conducted its first test, dubbing it a “peaceful nuclear explosion,” in 1974 at Pokhran in Rajasthan. This was followed by five further tests there in May 1998. Pakistan followed suit immediately with six tests of its own two weeks later at Chagai in Balochistan, the total number intended to equal the sum total of India’s tests. Between 2006 and September 2017, North Korea carried out six nuclear tests on its territory.

<sup>9</sup><https://www.ctbto.org/nuclear-testing/history-of-nuclear-testing/nuclear-testing-1945-today/>.

<sup>10</sup>This was later repeated in an interview for NBC television documentary *The Decision to Drop the Bomb* (1965): <https://www.youtube.com/watch?v=ZuRvBoLu4t0>. There is a second connection alluded to by these quotes. The test was named Trinity. In Hinduism the Trinity refers to Brahma, Vishnu and Shiva: The three gods of creation, preservation and destruction.

### **Possible pathways to nuclear war**

Asia is the only site and Japan the sole victim of the use of nuclear weapons. Asia also contains the least unlikely prospects of the next nuclear use. A direct China–USA confrontation from an escalation spiral starting in the South China seas is possible and in mid-2017 China and India confronted each other in a tense military standoff at the tri-junction with Bhutan in the Doklam plateau (Thakur 2017). Even a limited regional nuclear war, in which India and Pakistan use 50 Hiroshima-size (15 kt) bombs each, could lead to a global famine that kills up to two billion people (Helfand 2013). Premeditated nuclear strikes seem unlikely pathways to a nuclear exchange. But the toxic cocktail of growing nuclear stockpiles, expanding nuclear platforms, irredentist territorial claims, and out-of-control jihadist groups makes the subcontinent a high-risk region of concern.

Northeast Asia is the world's most dangerous cockpit for a possible nuclear war that could directly involve four nuclear-armed states, plus South Korea, Japan, and Taiwan. Washington has repeatedly warned that the attainment of a weaponized intercontinental ballistic missile (ICBM) nuclear capability that puts the American mainland within reach of North Korean nuclear-tipped missiles would be regarded as and responded to as unacceptable. When Pyongyang achieved such capability in August 2017, Kim Jong-un and Donald Trump engaged in an escalating rhetoric of bellicose threats. Any use of force by North Korea would be suicidal and Kim has given no hint of being suicidal. For its part the USA would face the formidable difficulty of locating, hitting, and destroying all of North Korea's nuclear (and biological and chemical) warheads, facilities, materials, and delivery platforms in a surprise first strike. In addition, the several thousand artillery rockets that the North, which for decades has trained to be on hair-trigger alert against a US attack, can train on the South gives it the capacity to flatten Seoul and other targets, with the likely death toll in the millions. If Kim survives with even a few of his nuclear weapons, he could order one of the worst mass killings in history.

According to a recent report from the US Congressional Research Service, between 30,000 and 300,000 people would die in South Korea in the first days of a new war resulting from the use of the North's conventional artillery. If North Korea used nuclear, biological, and chemical weapons, the casualty level would escalate dramatically. If China joined the war, the casualties would jump and the theatre would expand beyond the peninsula. A protracted conflict could expand to Japan and US territories in the region. The report concludes that "an escalation of a military conflict on the peninsula could affect upwards of 25 million people on either side of the border, including at least 100,000 U.S. citizens (some estimates range as high as 500,000)" (McInnis et al. 2017, 19–20).

In sum, the USA simply does not have the required degree of certainty to identify, locate, and destroy all three categories of nuclear targets (warheads, the bomb production infrastructure, and delivery vehicles) (Stratfor 2017) and any effort to do so would exact a grim toll. And yet, despite military strikes being a non-starter, a "pattern of comments... indicate a preference for a military response to North Korea" (Graham 2017). The reason for this is that the logic of Trump's "America First" policy contains the inescapable rationale for preventing North Korea from acquiring the capacity to strike the US mainland, regardless of the scale and gravity of the harm inflicted on South Koreans, Japanese, and others in the region. As Mark Bowden comments:



By Trumpian logic, the cost of all-out war might be acceptable if the war remains on the other side of the world...

Kim would bear the greatest share of responsibility for such a catastrophe, but for the U.S. to force his hand with a first strike, to do so without severe provocation or an immediate and dire threat, would be not only foolhardy but morally indefensible. That this decision now rests with Donald Trump, who has not shown abundant capacity for moral judgment, is not reassuring. (Bowden 2017)

Conscious of these acute dangers, Asian states voted overwhelmingly for the NWPT (Table 1). The possessor and umbrella countries are out of step with their neighbourhood in discounting the nuclear threats in favour of indefinite reliance on nuclear deterrence.

**Table 1.** Asia-Pacific votes on the NWPT.

|                                | Yes | No | Abstain | Did not vote |
|--------------------------------|-----|----|---------|--------------|
| Asia-Pacific                   | 26  | 0  | 1       | 11           |
| Of which ASEAN                 | 9   | 0  | 1       | 0            |
| Of which Pacific Island States | 9   | 0  | 0       | 3            |

N.B.

1. This is not the UN's Asia Group. It extends to Afghanistan and Pakistan in the West and Mongolia in the North but excludes the Middle East and Central Asia.
2. Singapore participated in the conference and the final vote, choosing to abstain. All the other non-supporting states from the Asia-Pacific, including China, India, the DPRK, and Pakistan as the four nuclear-armed states and Australia, Japan, and South Korea as the three umbrella states, did not take part in the vote on 7 July 2017.
3. Timor Leste occupies a place between ASEAN and the Pacific Islands Forum and is indeed an associate member of the latter.

Source: <https://www.un.org/disarmament/ptnw/participants.html>. Accessed 15 July 2017.

Thus if we exclude the four nuclear-armed and three nuclear umbrella states, 26 of the total of 31 states of Asia-Pacific (84 percent) voted to adopt the UN ban treaty. The five additional exceptions were Singapore (abstain), Maldives, Federated States of Micronesia, Nauru, and Tuvalu. The affirmative votes included nine of the ten ASEAN, and nine of the twelve Pacific Island, states.

26 votes for: Afghanistan, Bangladesh, Bhutan, Brunei Darussalam,\* Cambodia,\* Fiji,\*\* Indonesia,\* Kiribati,\*\* Laos,\* Malaysia,\* Marshall Islands,\*\* Mongolia, Myanmar,\* Nepal, New Zealand, Palau,\*\* Papua New Guinea,\*\* Philippines,\* Samoa,\*\* Solomon Islands,\*\* Sri Lanka, Thailand,\* Timor Leste, Tonga,\*\* Vietnam\*Vanuatu,\*\*

\*Member of ASEAN.

\*\* Pacific Island state.

## Legality

The NPT was a three-way bargain in which states agreed to facilitate transfer of nuclear technology and materials; non-NWS gave up the right to develop or acquire nuclear weapons; and the five NWS were permitted to keep their weapons pending such time as they negotiated elimination. In Article VI: "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament."<sup>11</sup>

The GA sought an Advisory Opinion from the International Court of Justice (ICJ) on the legality of nuclear weapons. Published on 8 July 1996, the Opinion contained three significant elements for present purposes (ICJ 1996).<sup>12</sup> First, a

<sup>11</sup><http://www.un.org/en/conf/npt/2005/npttreaty.html>.

<sup>12</sup>The normative status of the Court's Advisory Opinion is strengthened by the frequency of its recitation in GA resolutions.

majority of the Court held that the threat or use of nuclear weapons would *generally be contrary to the rules of international law, and in particular humanitarian law*. Second, the Court could not confirm the legality of nuclear weapon use *even in the extreme circumstance of the very survival of a state being at stake*. And third, it significantly strengthened the nature of NPT obligations by affirming unanimously that states have an obligation to pursue in good faith *and bring to a conclusion* negotiations leading to nuclear disarmament.

Yet, 21 years later, there are still around 15,000 nuclear weapons in the arsenals of nine countries, all of whom are modernizing, upgrading, or expanding nuclear weapon delivery platforms, and some are increasing stockpiles (Kile and Kristensen 2017). The NWS insist they have acted in good faith consistent with the Article VI obligation through unilateral decisions and bilateral agreements to reduce the numbers of nuclear warheads by 75–80 per cent since the Cold War. France and Russia also point to the Article VI linkage to general and complete disarmament, although the normative force of this linkage has arguably been broken over the successive review conferences (Meyer 2016).<sup>13</sup> In other words, the NPT granted temporary legal exemption to the NWS from prohibition that was applied to all other parties. Over the years the NWS have converted this temporary and conditional permission into the language of entitlement and enduring legitimacy. With their refusal to abolish nuclear arsenals, the NPT was subverted from a prohibition into a non-proliferation regime. The NPT has failed to function as the primary normative framework for reducing nuclear warheads and delegitimizing the possession and deployment of nuclear weapons. In 50 years since its adoption, not a single nuclear warhead has been eliminated through a multilateral agreement. In addition, the bilateral US–Russian process has also stalled and is at risk of being reversed.

A major evaluation of the implementation record of the agreed agenda from the 2010 NPT Review Conference documented that with respect to peaceful uses of nuclear energy and non-proliferation, where 50 and 33 per cent of recommendations had shown significant or maximum progress, respectively, with nuclear disarmament, the figure was a more miserly 17 per cent. Conversely, 0, 17, and 62 per cent, respectively, of the three sub-categories of recommendations had a record of minimal or nil progress (Evans, Ogilvie-White, and Thakur 2015, 251–61). In other words nuclear disarmament – which, as the NWS and umbrella states repeatedly reminded the world in 2016–2017 can only be implemented by those who possess nuclear weapons – has been the very poor cousin of non-proliferation and peaceful uses of nuclear energy in the promise-performance record of agreed NPT outcomes. The study's overall conclusion on the NWS record was damning: "Based on current arsenals, deployments and force postures, and on planned expansions, upgrades and modernization, every one of them is committed to the indefinite retention of significant nuclear-weapon capability" (Evans, Ogilvie-White, and Thakur 2015, paragraph 1.33). A lack of progress on disarmament makes it more challenging to hold the line on non-proliferation, even as any additional or suspected instance of proliferation makes progress on disarmament more difficult.

<sup>13</sup>Ford (2007), however, argues that the vague and weak disarmament obligations of the NPT compared to the stringent, immediate, legally binding, verifiable, and enforceable non-proliferation clauses confirm the treaty's real purpose was the latter and disarmament was merely a political sop. In 2017 Ford was appointed to a senior position in the Trump administration.

The UN conference on March 27–32 and June 15–July 7 was the *only* nuclear disarmament negotiation being held. All those boycotting the UN conference disrespected a duly constituted multilateral process driven by a two-thirds majority of NPT members. Article VI calls on “Each of the Parties” to NPT to undertake negotiations towards “effective” nuclear disarmament. The ICJ strengthened this to demand a conclusion to the negotiations. On the face of it, non-participation put Japan in non-compliance with this obligation.

The NWPT conforms to the NPT legal obligation and seeks to implement the letter and spirit of the 1996 Opinion delivered by the world’s most authoritative independent international judicial authority. The preamble notes the treaty is based on the:

principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, the rule of distinction, the prohibition against indiscriminate attacks, the rules on proportionality and precautions in attack, the prohibition on the use of weapons of a nature to cause superfluous injury or unnecessary suffering, and the rules for the protection of the natural environment.

India’s foreign ministry spokesman Gopal Baglay said on July 18 that the treaty “in no way constitutes or contributes to the development of any customary international law.” India, he emphasized, is not party “and so shall not be bound by any of the obligations that may arise from it.”<sup>14</sup> While this is absolutely correct with regard to India which is not party to the NPT, the position is more ambiguous for Japan and Australia as NPT parties. When India conducted nuclear tests in 1998, Australia, Japan, and others imposed sanctions even though India was not party to the NPT or the CTBT. One could thus argue that Australia, Japan, and the USA have been hoist by their own petard.

The NWPT may not impose binding legal obligations but does have legal implications for non-parties. Repeated vague “promises” to the contrary over the decades notwithstanding, the NWS have institutionalized nuclear deterrence as a permanent national security doctrine. They deploy their interpretation of the NPT as the main legitimizing normative framework for their own possession and the principal management tool to enforce non-proliferation on others. By contrast the alternative NWPT normative framework begins with the unambiguous and unconditional stigmatization of the possession, use, and threat of use of nuclear weapons by anyone and outlines pathways to negotiated nuclear disarmament. As a UN treaty resulting from a mandated multilateral conference, it gives authoritative legal underpinning to the civil society-led stigmatization of nuclear weapons.

According to Brazil’s Foreign Minister Aloysio Nunes Ferreira, “The agreement was a victory for the United Nations and multilateralism” that “reflects the historical aspiration from the large majority of the international community to ban the existence of such weapons” (Ferreira 2017). In turn this means that anti-nuclear advocates in all the possessor and umbrella countries can draw on the legitimacy of the NWPT to alter the prevailing domestic normative milieu. The states opposing the NWPT recognized

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<sup>14</sup>“Nuclear Ban Treaty Doesn’t Contribute to Customary International Law: India,” *The Wire* July 18, 2017, [https://thewire.in/159057/nuclear-ban-treaty-customary-law/?mkt\\_tok=](https://thewire.in/159057/nuclear-ban-treaty-customary-law/?mkt_tok=).

the threat and that is why they resisted and tried to discredit the process and the outcome so fiercely.

## Morality

Somewhat counter-intuitively, power and principles intersect in nuclear politics. Most countries have chosen nuclear abstinence because people overwhelmingly abhor the bomb as immoral. It is the most indiscriminately inhumane weapon ever invented. Its primary intended deterrent effect relies on the threat to kill millions of innocent civilians. Accurately called the balance of terror, deterrence is a euphemism for state-sanctioned nuclear terrorism.

### *The nuclear taboo*

The non-use of nuclear weapons since 1945 is largely explained by the strong moral taboo. There have been many occasions when they could have been used without fear of retaliation but were not, even at the price of defeat on the battlefield. Norms, not deterrence, have anathematized the use of nuclear weapons as morally unacceptable (Tannenwald 2007). The force of the norm is buttressed by operational disutility: the very destructiveness of nuclear weapons robs them of military or political utility. Their lethal destructiveness constitutes an existential threat to all human beings, not just to the leaders, soldiers, and citizens of the countries fighting a nuclear war. A full-blown nuclear war would destroy Planet Earth. How can any human being usurp the moral right to play God in making such a decision?

Nuclear weapons obliterate the distinction between combatants and civilians that is central to every moral code in all cultures, civilizations, and religions. The Catholic Bishops of America in the 1980s and the Ayatollahs of Iran today are united in the belief that nuclear weapons are morally proscribed by their respective religions. Civilians have always been attacked amidst armed conflicts and their rights and dignity violated in numerous ways. But the ethical code, including warrior's honour, has never held this to be permissible. Nuclear weapons cannot be just war-compliant with regard to the requirements for proportionality, civilian-combatant distinction, and no unnecessary suffering.

Deterrence as a doctrine is morally problematical. Its limited utility (only romantics and dreamers believe in its absolute utility) rests on the threat of inflicting mass killings on civilians. In 1983 the Catholic Bishops had granted "a strictly conditional moral acceptance of deterrence." Updating that, in December 2014 the Holy See argued that a "global ethic... of solidarity" points to a "morally responsible global future" which can only come from nuclear abolition. As well as "legal obligations," the disarmament treaties "are also moral commitments." The "double standard" in enforcing non-proliferation on some and not others "undermines the universality on which the NPT was constructed." And investment in nuclear weapons siphons off resources for poverty alleviation and development that "is essential to social justice" (Holy See 2014).

The NPT fails the test of inter-state equity. If the consequences of a nuclear war are systemic, then decisions on arsenals, doctrines, and use cannot be solely a matter of sovereign privilege. Possession of nuclear weapons is claimed by the NWS to be NPT-compliant for a tiny minority of five countries and NPT-illicit for everyone else.

The division leads in turn to hypocrisy on the part of the haves in attempting to enforce non-proliferation on the have-nots. This was true in 1998 for India and Pakistan which had violated no treaty to which they were parties. The claim that states that reject international treaties should nonetheless be bound by their normative reach would be truly revolutionary. It would mean, for example, that the USA would be bound by the UN convention on the law of the sea and be subject to the jurisdiction of the International Criminal Court. No US president would assert such a radical position.

The hypocrisy was in operation more recently with respect to Iran. The negotiations to resolve ambiguities on its suspected nuclear weapons program were led by the P5 + 1. The P5 possess around 98 percent of the world's stockpiles of nuclear weapons that they have held on to for five decades after committing to elimination, but insisted that Iran must not get even one. The "+1" is Germany which does not possess any nuclear weapons but does have about 20 US bombs stored on its territory and shelters under the NATO nuclear umbrella.

Double standards infuse the enforcement of the non-proliferation norm. Israel has never been subjected to normative sanction for acquiring nuclear weapons. Gradually over the past decade, many countries have come round to accepting India and Pakistan also as de facto nuclear-armed states. Thus we have an "enforcement continuum": Israel, India, Pakistan, North Korea, and Iran.

Because countries lack individual or collective capacity to cope with the humanitarian impacts of a nuclear war, the leaders of nuclear-armed states have an ethical obligation to inform citizens about the inability to cope with the devastation of a nuclear war. The reason they fail to do so is that public support for nuclear weapons could then plummet. A more cynical explanation is that the fear of nuclear war is open to manipulation to bind citizens emotionally to the national security state (Masco 2014). In persisting with nuclear weapons and doctrines not only do leaders breach their responsibility to protect their people; they build fortified sites for their own protection and survival (Graff 2017).

The NPT has been instrumentalized by the N5 as the one and only legitimizing principle for their own continued possession of nuclear weapons. Mass defection would rob them of the last remaining fiction of legal justification as possessor states. At which point do non-NWS conclude that defection from the NPT regime is not just likely to be politically effective as a circuit breaker in the existing impasse but is also the morally permissible and ethically responsible course of action? (Doyle 2009)

The NWPT represents one last effort on the part of the non-NWS to try and reach the long-held goal of nuclear disarmament through stigmatization and prohibition (Thakur, *forthcoming*). The Preamble acknowledges "the ethical imperatives for nuclear disarmament and the urgency of achieving and maintaining a nuclear-weapon-free world" which is described as "a global public good of the highest order, serving both national and collective security interests." According to the UN Conference President Ambassador Elayne Whyte Gomez of Costa Rica: "Each one of us has assumed the historic responsibility to give humankind an instrument that reflects the moral imperative of prohibiting nuclear weapons and leading to a future free of nuclear weapons."<sup>15</sup>

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<sup>15</sup>Kyodo News Service, "Nuclear Weapons Ban Treaty Likely to be Adopted This Week at U.N.," *Japan Times*, 4 July 2017, <http://www.japantimes.co.jp/news/2017/07/04/national/politics-diplomacy/nuclear-weapons-ban-treaty-likely-adopted-week-u-n/>.

## Humanity

The combination of growing awareness of nuclear threats and rising frustration with the perceived obstructionism of the nuclear-armed states generated a powerful alliance of civil society activists and like-minded states rooted in humanitarian principles.<sup>16</sup> The humanitarian consequences of any use of nuclear weapons have been a recurring theme in nuclear disarmament advocacy since the 1950s. It was the primary motivation for the challenge to the legality of nuclear weapons in the 1990s. The NWPT affirms the collective revulsion of the international community at a *morally unacceptable weapon of catastrophic destruction* and delegitimizes the very possibility of nuclear war as an unacceptable risk to human civilization.

The new movement's factual premise is the lack of individual or collective capacity to cope with the humanitarian impacts of a nuclear war. On 22 October 2012, a 34-country joint statement at the GA argued that the catastrophic humanitarian consequences of nuclear weapons concern the community of states as a whole. They must never be used again under any circumstances. "The only way to guarantee this is the total, irreversible and verifiable elimination of nuclear weapons, under effective international control."<sup>17</sup> This was repeated in 2013 and again in 2014, with supporting countries increasing to 155.

Three conferences were held on the humanitarian impact of nuclear weapons in Norway, Mexico, and Austria in 2013–2014. At the conclusion of the last one in Vienna on 9 December 2014, the host country unilaterally issued the "Austrian Pledge" that committed it to work with like-minded states to "fill the legal gap for the prohibition and elimination of nuclear weapons."<sup>18</sup> In addition, 127 countries signed a humanitarian pledge "to stigmatize, prohibit and eliminate nuclear weapons."<sup>19</sup> The NWPT gives effect to that pledge.

On 7 December 2015 the GA called for work "to fill the legal gap for the prohibition and elimination of nuclear weapons" (A/RES/70/48). This was reinforced with a humanitarian pledge resolution adopted on the same day which established an open-ended working group to meet in three sessions and report to the following GA session (A/RES/70/33). Crucially, the open-ended working group decided to operate under GA rules that permit decisions by vote, instead of the decision-blocking consensus rule of the CD. The group presented its findings in August 2016, with the core conclusion being a call for the GA to authorize the commencement of negotiations on a legally binding instrument to prohibit nuclear weapons, leading to their eventual elimination. This was duly done on 23 December 2016 (A/RES/71/258).

The NWPT is explicitly rooted in powerful humanitarian principles. The Preamble expresses deep concern "about the catastrophic humanitarian consequences that would result from any use of nuclear weapons" that pose "grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women

<sup>16</sup>The 2017 Nobel Peace Prize was awarded to the International Campaign to Abolish Nuclear weapons (ICAN) in recognition of its decade-long "groundbreaking efforts to achieve a treaty-based prohibition" of nuclear weapons by drawing "attention to the catastrophic consequences of any use" of these weapons. AFP, "Anti-Nuclear Campaign ICAN Awarded Nobel Peace Prize," *Japan Times*, October 6, 2017, <https://www.japantimes.co.jp/news/2017/10/06/world/anti-nuclear-campaign-ican-wins-nobel-peace-prize/>.

<sup>17</sup><http://www.psr.org/resources/joint-statement-on-the.html>.

<sup>18</sup><http://www.icanw.org/wp-content/uploads/2015/04/AustrianPledge-ICAN.pdf>.

<sup>19</sup>[http://www.icanw.org/wp-content/uploads/2015/03/HINW14vienna\\_Pledge\\_Document.pdf](http://www.icanw.org/wp-content/uploads/2015/03/HINW14vienna_Pledge_Document.pdf).



and girls.” Further, it recognizes the “disproportionate impact of nuclear-weapon activities on indigenous peoples.” And it reaffirms “that any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience.”

## A practical agenda for action

The international community has so far banned two entire classes of WMD – biological and chemical weapons. It has also negotiated treaties prohibiting some categories of particularly indiscriminate and inhumane conventional weapons – landmines and cluster munitions. By no means every country has signed these conventions: the biggest users and producers of cluster munitions, and those with the largest anti-personnel-mine stockpiles, are not parties. But the conventions nonetheless exercise strong normative force and quite directly influence the behaviour of non-states parties. The CTBT provides a very clear example of this; although its peculiar requirement for universal ratification by Annex 2 states prior to entry-into-force could leave the treaty in a perpetual limbo, the current voluntary moratorium on nuclear testing (with the sole exception of North Korea) has enormous practical effect.

Successive international commissions – the Canberra Commission, Tokyo Forum, Blix Commission, Evans–Kawaguchi Commission – have emphatically reaffirmed three core propositions. As long as any state has nuclear weapons, others will want them. As long as they exist, they will be used again someday, if not by design and intent, then through miscalculation, accident, rogue launch, or system malfunction. Any such use anywhere could spell catastrophe for the planet. The only guarantee of zero nuclear weapons risk is zero nuclear weapons possession.

Where does this leave Japan? One consequence of the global nuclear order being bifurcated between the old NPT and the new ban treaty is that the contradiction underlying Japan’s history of hunting with the nuclear hounds while running with the anti-nuclear hares has been starkly highlighted. Its resulting loss of credibility as a world-leading disarmament advocate was made clear in October. For 24 consecutive years, Japan has presented an almost identical nuclear disarmament resolution at the United Nations. In 2017, when Japan presented a significantly weakened draft resolution (L.35, “United action with renewed determination towards the total elimination of nuclear weapons”), the number of co-sponsors dropped. The resolution was adopted on 27 October by a 144–4–27 vote in the GA First Committee. The number of countries voting in favour fell by 23 from the 167 recorded in the equivalent resolution in 2016 and was the lowest since 136 in 2002, while the abstainers increased from 16 in 2016 to 27 in 2017, including 15 that had voted in favor in 2016 like Austria, Brazil, and New Zealand (Kanari and Matsuo, 2017).<sup>20</sup> Several states explained their abstention by pointing to the weakening of the disarmament commitments and the lack of any reference to the NWPT (Acheson, 2017, 6–8). The dilution of Japan’s traditional position was also noted and criticized in Japan.<sup>21</sup>

<sup>20</sup>The four negative votes were from China, North Korea, Russia, and Syria.

<sup>21</sup>“Japan’s Weakened UN Draft Resolution on Nukes Erodes Trust,” editorial, *The Mainichi*, October 17, 2017, <https://mainichi.jp/english/articles/20171017/p2a/00m/0na/004000c>.

This points to an urgent need for Japan to launch initiatives to regain lost credibility. The contributions of the Non-Proliferation and Disarmament Initiative (NPDI), a 12-state grouping that includes Japan and Australia as co-founders<sup>22</sup> has not been very impressive on concrete outcomes. Instead, or at least in addition, based on the foregoing analysis, four courses of action are open to it. The first and most important is to sign the NWPT as soon as possible. There is no existing policy or practice that we know of that is in violation of any of the treaty's prohibitions, so there is no bar to immediate signature.

As well as putting Japan on the right side of the five domains discussed in this article, this would bring major benefits in countering the widespread perception of its total subservience to Washington and enhancing Japan's profile. Despite an unblemished record of humane civilian internationalism since 1945, Tokyo's regional reputation has suffered for three reasons. The textbook controversy sends the unfortunate message that significant sections of Japanese society continue to refuse to face the facts of Japanese aggression and wartime atrocities. The practice of many Japanese prime ministers and cabinet ministers to visit the Yasukuni Shrine where several Class A convicted war criminals are enshrined is similarly damaging. And the highly emotive issue of comfort women puts a brake on strong relations even with fellow-US ally South Korea. The three factors together undo much of the good done by the periodic apologies issued by responsible Japanese leaders. By becoming party to the NWPT Japan would put itself on the right side of geography and help to offset somewhat the negative images caused by the above factors.

### ***No first use***

Second, Japan could join with Australia to launch a major initiative to negotiate a global NFU convention with no real security downside and many security and political upsides. The two countries, along with other traditionally progressive countries like Canada and Norway, have the financial resources and the technical, legal, and bureaucratic capacity to provide global leadership on this issue.

The purposes of declaratory policy include providing intellectual guidance to military planners, deterring adversaries, and reassuring allies and friends. They also shape global nuclear norms like deterrence, non-proliferation, security, and non-use. The last in particular has come under severe strain, deepened still further by tweet-prone President Trump, from the fact that the strategic boundary between nuclear warheads and conventional precision munitions is being steadily eroded. An NFU policy would strengthen strategic stability, reinforce the normative boundary between nuclear and conventional weapons, deepen the illegitimacy of any first use of nuclear weapons, and devalue the currency of nuclear weapons.

In practice, first use of nuclear weapons lacks strategic logic. The moral opprobrium of using nuclear weapons against a non-nuclear country would be too high a price to pay for any security gains. This explains why Argentina invaded the Falkland Islands in 1982 despite the British nuclear deterrent: it was confident that the UK would not escalate to the use of nuclear weapons. Against nuclear adversaries, any first use would provoke a nuclear retaliation. Rather than sensible policy, therefore, a first-use policy is

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<sup>22</sup><http://www.nti.org/learn/treaties-and-regimes/non-proliferation-and-disarmament-initiative-npdi/>.

a commitment to mutual suicide. Because nuclear adversaries know this, the threat of first use is non-credible and no policy that is not credible can successfully deter any aggression.

NFU policy does not guarantee NFU, any more than a first-use policy guarantees first use. What are crucial are declarations, doctrines, postures, and deployments that reduce risks. An NFU policy would eliminate the rationale for forward deployment of US nuclear weapons on the territory of NATO allies in Europe (Cartwright and Blair, 2016; Chalmers and Lunn, 2010; Norris and Kristensen, 2011; Podvig and Serrat, 2017).<sup>23</sup> Those based in Turkey were a matter of some concern during the failed coup attempt in July 2016.

China and India are the only two nuclear-armed states committed to NFU in current nuclear policies. If no other nuclear powers follow their examples, they too might abandon NFU and put some nuclear weapons on high alert (Kulacki, 2016, 1). If China follows the Russian and USA lead, how long before the posture proliferates to India and Pakistan? Conversely, the intent signalled by a declaration of NFU can be buttressed by a nuclear restraint regime. If adopted by all nuclear-armed states, NFU could become the centrepiece of a global nuclear restraint regime. Nuclear forces and infrastructure would be reconfigured to make them better suited to deterring nuclear attack and less fit for offensive actions.

A key factor inhibiting Washington from adopting NFU is nervousness of some European and Asian allies who seek security under the protective umbrella of US nuclear weapons (Rogin, 2016). For example, the Australian Defence White Paper stated: “Only the nuclear and conventional military capabilities of the United States can offer effective deterrence against the possibility of nuclear threats against Australia” (Department of Defence, 2016, paragraph 5.20). The reliance of Japan and South Korea on the US nuclear umbrella is even greater, given their propinquity to North Korea and China (as well as Russia as the third Northeast Asian nuclear-armed state).

Gregory Kulacki has written that four officials of Japan’s embassy in Washington, without the knowledge of their own government, made formal submissions to a Congressional commission preparing an advisory report to the forthcoming US Nuclear Posture Review. They lobbied the Obama administration to reverse the George H.W. Bush decision to remove tactical nuclear weapons from the region. They did not realize that under standard Congressional practice the submissions would be made public and when it was, the resulting furore in Tokyo forced the government to make official responses. Foreign Minister Katsuya Okada wrote a letter in December 2009 that extended deterrence did not “require the maintenance of policies, strategies or weapons that conflict with the U.S. President’s goal of a moving towards a world without nuclear weapons” (Kulacki, 2013, 3). But in July 2016 the Abe government sought urgent talks with Washington to convey strong concerns over the possibility of the USA adopting NFU, describing it as “unacceptable.”<sup>24</sup>

Thus a first-use policy, even though it makes no operational sense as a policy of deterrence, might serve the purpose of strategic reassurance of the umbrella states. If so,

<sup>23</sup>Total NATO nuclear weapons stationed in non-NWS in Europe: 160–240 (Belgium 10–20, Germany 20, Italy 70–90, Netherlands 10–20, Turkey 50–90). See also “Nuclear Sharing,” *Wikipedia*, [https://en.wikipedia.org/wiki/Nuclear\\_sharing#cite\\_note-RUSI-2010-3](https://en.wikipedia.org/wiki/Nuclear_sharing#cite_note-RUSI-2010-3).

<sup>24</sup>Kyodo News, “Japan Seeks Talks with U.S. Over ‘No First Use’ Nuclear Policy Change,” *Japan Times*, July 15, 2016, <http://www.japantimes.co.jp/news/2016/07/15/national/japan-seeks-talks-u-s-no-first-use-nuclear-policy-change/>.

the latter are suffering from a potentially fatal illusion. Allies who believe that the USA would be the first to use nuclear weapons in any conflict, says Michael Krepon (2016), “are attached to a fiction and a psychological crutch.” The use of nuclear weapons to defend an ally against a nuclear-armed adversary would risk nuclear retaliation against the USA. Faith in a first-use policy rests in the final analysis on suspended disbelief. A nuclear umbrella may offer protection of the great and powerful ally, but any actual use ceases to be protective and instead morphs into the most catastrophically self-destructive security guarantee imaginable. The limited utility of nuclear deterrence rests on the certainty of nuclear retaliation, not in any belief in first use. As Krepon (2016) notes, a first-use posture by Pakistan did not prevent a limited war between nuclear adversaries India and Pakistan in 1999, did not affect its outcome, and did not prevent dangerous crises from developing.

A second objection to NFU concerns the risks of nuclear breakout by worried US allies. Rising nationalism in the region, maritime territorial disputes, North Korea’s nuclear defiance, and doubts about the reliability of US deterrence have been catalysts for pro-nuclear arguments in Japan and South Korea (Sokolski, 2016). An opinion poll in September 2016 showed a 60 per cent support for Seoul developing its own nuclear weapons.<sup>25</sup> Moreover, Trump supporters would view the acquisition of nuclear weapons by South Korea and Taiwan as a success of Trump’s America First diplomacy that would check China and permit the USA to withdraw troops from East Asia.<sup>26</sup> But the US umbrella, the bilateral US treaty that prohibits diversion of nuclear material to weapons-relevant programs in return for US fuel for its power reactors, and the negative diplomatic and economic repercussions of withdrawing from the NPT constitute powerful arguments in support of the denuclearized status quo.

Meanwhile Japan has stockpiled about 11 tonnes of plutonium, enough to make more than 2000 bombs.<sup>27</sup> Nevertheless internationally the NPT constrains the weapon option, the US nuclear extended deterrence bolsters Japan’s security confidence and weaponization could rupture relations with Washington and poison relations in the region. Domestically, the three non-nuclear principles (non-possession, non-production, and non-introduction of nuclear weapons),<sup>28</sup> the very strong nuclear allergy in public opinion, the atomic energy basic law that limits nuclear activity to peaceful purposes, and legal, bureaucratic, scientific, and public opinion potential vetoes (Hymans, 2011) are additional powerful constraints on weaponization.

### ***De-alerting nuclear weapons***

Third, along with other umbrella allies, Japan sits uncomfortably between the NWS and non-NWS. This could be turned to advantage by acting as an intermediary between the concerns of the non-NWS and the policies and practices of the NWS. Specifically, Japan could issue public appeals to Russia and the USA to take all nuclear weapons off high alert

<sup>25</sup>Yonhap News Agency, “Nearly 60 pct of S. Koreans Support Nuclear Armament: Poll,” September 23, 2016, <http://english.yonhapnews.co.kr/national/2016/09/23/89/0301000000AEN20160923005300315F.html>.

<sup>26</sup>Senkaku Magazine, “An Idea Buds in the U.S. That Japan Should Go Nuclear,” Japan Times, October 24, 2017, <https://www.japantimes.co.jp/opinion/2017/10/24/commentary/world-commentary/idea-buds-u-s-japan-go-nuclear/>.

<sup>27</sup>This is not counting over 35 tonnes that Japan has in the UK and France.

<sup>28</sup>Ministry of Foreign Affairs, “Three Non-Nuclear Principles,” <http://www.mofa.go.jp/policy/un/disarmament/nnp/>.

immediately, extend New Start, suspend modernization plans, refrain from provocative new deployments, and commence negotiations on further nuclear weapons reductions.

NFU policies would help Russia and the USA to walk back from the 1800 nuclear warheads they hold on high alert, ready to launch-on-warning. Like first use, this practice too is a good example of a Cold War nuclear legacy posture. Under the first-use policy, US nuclear weapons are aimed at 1000 Russian, 500 Chinese, and dozens of other targets in North Korea and some non-NWS (Blair, 2016). The launch of nuclear weapons on high alert by mistake, rogue launch, miscalculation of incoming information, or through system malfunction is low probability but high impact. Should the world be held hostage to an all-out nuclear war launched on the basis of blips on a radar screen? Keeping nuclear weapons on high alert, ready for launch within minutes of warning of incoming missiles, creates the risk of a mistaken launch in response to a false warning. The National Security Adviser would have about three minutes in which to notify the president, who would have about 10 minutes in which to decide how to respond. In the midst of a tense crisis generating fear and panic against the reality of 15–30 minutes flight times of incoming missiles, the president will be required to decide on authorizing the launch of US nuclear bombs based on possibly confusing, contradictory and false reports from early warning sensors.

By moving to retaliatory strike postures, de-alerting is a strategic step in downgrading the military role of nuclear weapons. It is also a necessary step in transforming relations between nuclear adversaries from strategic confrontation to strategic collaboration. It confirms the status of nuclear weapons as weapons of last resort. Moreover, indefinite reliance on nuclear weapons on short notice alert can legitimize the nuclear ambitions of others. There is thus a non-proliferation as well as a disarmament and crisis stability argument for de-alerting. And reducing alert status is a confidence-building measure not just among NWS, but also between them and non-NWS.

In addition to the reinforced normative barrier against use, NFU and de-alerting would permit the dismantlement of vulnerable land-based warheads. A report by the Washington-based Nuclear Threat Initiative concluded that NATO's enhanced conventional capabilities "should be sufficient for credible deterrence in the east and flexible for other contingencies" (Lunn, Williams, and Andreasen 2016, 1). Perry (2016) makes a persuasive case for dismantling the US land-based nuclear forces. Once the ICBMs are launched, he points out, they cannot be recalled. He recalls a false alarm about 200 Soviet ICBMs from the 1970s when he was the undersecretary for defence (research and engineering). The general who had telephoned the news quickly explained that it was a false alarm and they needed technical help to work out why the computer had malfunctioned.

During the Cold War, the ICBMs served a dual purpose. The then-submarine-based nuclear force was not accurate enough and the ICBMs made up for that. The submarine force was also vulnerable back then to a disabling strike by the enemy. Today the critical element of a survivable, reliable, and credible deterrent is the strategic nuclear submarines that are virtually invulnerable to enemy attack. The hundreds of submarine-based nuclear warheads left *in situ* would be more than adequate to maintain a reliable and credible deterrent after all land-based missiles have been de-alerted. But for insurance, the USA could retain a fleet of bombers. Perry concludes that the analysis holds true regardless of whether or not Russia reciprocates. If Moscow wants to enlarge

its missile arsenal, he believes, it will merely damage its economy without affecting US nuclear preparedness and relative strength.

In a matching study, Colonel B. Chance Saltzman of the US Air Force and colleagues calculated that the USA can meet all its national security and extended deterrence requirements with just 311 nuclear weapons: 192 single-warhead, hard to detect and highly survivable and accurate SLBMs aboard 12 Ohio class submarines, each of which can hold 24 missiles; 100 single-warhead ICBMs; and 19 air-launched cruise missiles aboard stealth B-2 bombers (Forsyth, Saltzman, and Schaub 2010).

Finally, Japan could support efforts to exchange best practices between Europe and the Asia-Pacific for stabilizing nuclear relations and improving the robustness of nuclear peace, safety, and security. For example Asia-Pacific is conspicuous for lacking a regional nuclear energy community (Carlson 2013), yet this is the only continent where nuclear power generation capacity is growing significantly. China, India, and Pakistan could also be encouraged to explore an open skies agreement adapted to the specific circumstances of the triangular relationship. All these measures would help to mute and reduce the nuclear risks and threats that exist in Asia-Pacific.

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