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Written evidence to International Relations Committee Nuclear Non-Proliferation Treaty and nuclear disarmament inquiry

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1. UNA-UK welcomes the International Relations Committee's timely inquiry into the matter of nuclear non-proliferation and disarmament.
2. In this submission UNA-UK addresses several of the issues included in the stated scope of the inquiry including nuclear risk, the Nuclear Non-Proliferation Treaty (NPT), the Treaty on the Prohibition of Nuclear Weapons (TPNW), the P5 and the role of the UK. Where possible we have aggregated points and recommendations made under these headings.

Nuclear risk

3. Nuclear risk is affected by the health of the rules-based international system. A community of states universally adhering to a set of treaties, structures and shared principles designed to reduce nuclear risk will indeed reduce nuclear risk. However, the current environment within which nuclear risk must be considered is one of rising big-power tensions and faltering commitment to international cooperation.
4. The security of the UK is contingent on a healthy rules-based international system. Evidence of the erosion of this system, which has the UN at its heart, is recognised by the UK as a principle threat and driver of policy decisions on national security. This precipitated a welcome reassertion from the UK in 2018 of the need to strengthen the rules-based international system as a priority¹.
5. In her speech to the General Assembly in September 2018, Prime Minister Theresa May said: "we must act to uphold the international rules-based system", explaining that this is "not just a moral imperative. It is also a matter of self-interest"².
6. The international system includes the institutional machinery of international cooperation as well as a plethora of established and emerging international law. Given the lack of an enforcement mechanism for many parts of international law, the system relies heavily on countries' faith that the rest of the international community will play by the rules. It follows that selectivity or resistance by a state in applying the rules in one area, could reduce faith in that state's credibility as a rule-follower, and have a negative knock-on effect to other states' adherence in other areas.
7. Russia in its actions in Ukraine, in its support for President Assad and with respect to chemical weapons use has dealt a significant blow to the international system. America under President Trump has reduced US support for multiple UN entities and withdrawn from multilateral agreements, including the Joint Comprehensive Plan of Action, and in doing so, has showed disdain for the principles of international cooperation. On some issues, UK actions have been supportive. For example, the UK's 0.7% commitment to overseas aid has set a positive example. However, across the board Britain's support for the rules-based system is patchy as highlighted by UNA-UK's 2018 Foreign Policy Scorecard.³
8. The existence of nuclear weapons represents an inherent and existential risk to humanity but in an environment of faltering faith in the international system – in part a symptom of big-power tensions –

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705347/6.4391_CO_National-Security-Review_web.pdf

² <https://www.gov.uk/government/speeches/pm-speech-to-the-un-general-assembly-26-september-2018>

³ <https://www.una.org.uk/scorecard>

that risk is increasing. UN analysis reinforces this and places primary responsibility for reducing this risk with those states armed with nuclear weapons. The UN's High Representative for Disarmament Affairs has noted that "The threat of the use – intentional or otherwise – of nuclear weapons is growing. This threat, which concerns all humanity, will remain for as long as nuclear weapons continue to exist in national arsenals"⁴

9. The UN Secretary-General has described efforts to achieve the total elimination of nuclear weapons as being "in extreme crisis" and puts the onus for remedying the situation squarely with the nuclear armed states, including the "N5"⁵: "The States that possess nuclear weapons have primary responsibility. They must prevent the use of nuclear weapons, reduce the danger of nuclear war, and lead efforts on non-proliferation and disarmament"⁶
10. This submission concentrates on the impact of Britain's policies and decisions on the health of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) – a treaty regarded by the UK as the "cornerstone" of the system of international rules on nuclear security⁷.

Interplay between the NPT and the TPNW

11. The health of the NPT depends on the five recognised nuclear armed states (N5) – Britain, China, France, Russia and USA - keeping their side of a bargain by making "good faith" attempts to negotiate and make progress towards a world without nuclear weapons. In return, the remaining 183 states agree not to pursue a nuclear weapons capability.
12. The widespread perception of deteriorating relations both within members of the N5 but also between the N5 and non-nuclear weapon states has exposed an important opportunity for the UK to improve relations and set a positive example across the three pillars of the NPT.
13. It has therefore been surprising and concerning to note the UK's approach towards an initiative led by non-nuclear weapons states designed to make progress on the core tenets of disarmament. The UK has failed to participate in a string of multilateral discussions on nuclear disarmament, including meetings and conferences mandated by the UN. This approach is irreconcilable with the UK's international obligation under Article 6 of the NPT which requires the UK to participate in negotiations on disarmament in "good faith". Non-participation in discussions attended by the vast majority of UN member states is also at odds with the 2010 outcome document of the NPT in which nuclear armed states agreed to "Consider the legitimate interest of non-nuclear-weapon States".⁸
14. Since the 2010 outcome document was agreed, the UK representatives have been absent at multiple initiatives and discussions on multilateral disarmament, including:
 - 2013 UN Open-Ended Working Group
 - 2013 conference on the humanitarian impact of nuclear weapons in Oslo
 - 2014 conference on the humanitarian impact of nuclear weapons in Nayarit
 - 2016 UN Open-Ended Working Group
15. The conferences in Oslo and Nayarit were part of an initiative examining into the humanitarian consequences of nuclear weapons. As a nuclear-armed state the UK has been able to conduct privileged research on this matter and has a moral responsibility as well as a legal responsibility under the NPT to participate in such conferences. By not doing so, the international community has not been able to benefit from UK analysis on significant questions relating to the humanitarian and environmental impact of nuclear weapons detonations.
 - *The Committee should call on the UK to publish (in unclassified format as appropriate) all research conducted by the UK on the humanitarian and environmental consequences of a nuclear detonation*

⁴ <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2018/04/USG-HR-Statement-to-Second-Session-of-the-Preparatory-Committee-in-Geneva2.pdf>

⁵ See paragraph 26

⁶ <https://www.una.org.uk/news/our-world-going-backwards-secretary-general-announces-agenda-disarmament-against-troubling>

⁷ <https://www.gov.uk/government/news/uk-statement-on-treaty-prohibiting-nuclear-weapons>

⁸ http://www.europarl.europa.eu/meetdocs/2014_2019/documents/sede/dv/sede290115disarmamentactionplan_/sede290115disarmamentactionplan_en.pdf

16. Subsequently, the UK chose not to participate in the negotiations which created the TPNW, also known as the ‘ban treaty’, adopted at the UN in July 2017 with the support of 122 countries. Throughout the process, rather than participating in good faith to shape the outcome in line with UK interests, the UK dismissed the initiative from the outside, at times literally: in March 2017, the UK ambassador joined his US counterpart in protesting the initiative by standing outside the TPNW negotiating room while the Pope and Hiroshima survivors prepared to address delegates on the need for a world free of nuclear weapons.⁹
- *The UK should commit to attending all multilateral meetings on nuclear disarmament. Objections to the substance of any such meeting should be made from within the room.*
17. Following the adoption of this Treaty, the UK, along with France and the US, issued a statement saying the ban treaty “will not enhance any country’s security, nor international peace and security. It will do the exact opposite by creating even more divisions at a time when the world needs to remain united in the face of growing threats[...]risks undermining the existing international security architecture”¹⁰
18. The UK’s labelling of the TPNW as a divisive initiative will itself serve to deepen divisions and make it harder to reach consensus agreements on nuclear security in other multilateral forums, such as the NPT. It demonstrates a blindness to the fact that the TPNW arose as a consequence of a perceived N5 failure to uphold their Article 6 commitments. Therefore, a continued dismissive approach to the ban treaty appears to be inconsistent with the UK’s strategic objectives. Such an approach is also unequivocally at odds with UN guidance on the issue. A statement made by UN High Representative on Disarmament Affairs, speaking in UK Parliament in February 2018, implored the N5 to desist from attacking the TPNW, saying: “don’t ignore it, don’t attack it”.¹¹
- *The UK should adopt a constructive approach towards the TPNW and acknowledge it as a legitimate part of the rules-based international system. Within this approach, the UK should:*
 - *Announce the intention to attend any future Meeting of States Parties of the TPNW as an observer, to follow developments and avoid misconceptions;*
 - *Provide technical expertise and other input within the TPNW framework where relevant, for example on: discussions of verification issues that will take place and on which the UK continues to do substantial work; and on activities to address ongoing human and environmental harm from past nuclear testing;*
 - *Until such time that it becomes a State Party of the TPNW, voluntarily implement Article 6 of the TPNW on victim assistance and environmental remediation and publish details of actions taken;*
 - *Foster a dialogue with countries and organisations working on the TPNW on how the Treaty can make an effective contribution to disarmament, including through making a positive, reinforcing impact on the disarmament pillar of the NPT.*
 - *The UK should adopt a policy commitment to ultimately become a State Party to the TPNW*
19. UNA-UK notes the Swedish initiative, launched in 2017 by Foreign Minister Margot Wallström, to commission an investigation to analyse the consequences of a possible future Swedish implementation of the TPNW. The investigation did not recommend that Sweden join the TPNW, but did demonstrate sincerity in Sweden’s commitment to nuclear disarmament and further supported engagement to “promote development of the Treaty” which “will be of value in itself even if Sweden does not accede and should be seen as an element in a future Swedish non-proliferation and disarmament policy, not least in the context of the NPT”.¹²
- *The UK should follow Sweden’s lead, both by embarking upon an independent or public consultation on the consequences of a possible future implementation of the TPNW, and by looking for constructive ways to promote development of the Treaty. In both cases this would demonstrate engagement with the process and would be well received by non-nuclear states, but would not require any commitment to ratification.*
20. Another likely contributory factor to divisions in the NPT which has widespread ramifications for the UK’s ability to strengthen future international laws and norms, is the UK’s repeated assertions that the TPNW does not represent emerging customary law. As stated by the UK in a statement

⁹ <https://www.nytimes.com/2017/03/27/world/americas/un-nuclear-weapons-talks.html>

¹⁰ <https://usun.state.gov/remarks/7892>

¹¹ <https://www.una.org.uk/news/un-disarmament-chief-urges-states-build-common-ground-nuclear-disarmament>

¹² https://www.regeringen.se/48f047/contentassets/55e89d0a4d8c4768a0cabf4c3314aab3/rapport_l-e_lundin_webb.pdf

following the conclusion of TPNW negotiations: “the UK would not accept any argument that this treaty can constitute a development of customary international law”¹³.

21. This rejection demonstrates an attitude towards customary international law which other states are likely to perceive as arrogant and is therefore likely to further erode trust between nuclear and non-nuclear states. Customary international law is defined by the statute of the International Court of Justice as “evidence of a general practice accepted as law”.¹⁴ It evolves through ‘state practice’ – the widespread repetition of acts, or declaration of the legality of acts, by a significant number of states and the absence of their rejection by a significant number of states. States therefore establish and modify customary international law through collective declaration and action. For these reasons, the UK is ill advised to unilaterally (or with the support of merely a small group of states) declare that the action of the significant number of 122 member states in negotiating the TPNW does not constitute customary international law. This problematic statement is thrown into even sharper relief by the fact that in another context, that of the development of a norm regarding the use of military force for purposes of humanitarian intervention, the United Kingdom has been making the case that the actions of a mere three states (the US, UK and France) constitute a new element of customary international law.¹⁵
 - *The UK should ensure that its communications accurately reflect the reality that customary international law is formed and modified through the actions and declarations of a significant number of states, and that as such the role the United Kingdom can play in its development is that of one voice among equals. The UK should refrain from unilaterally, or with minimal support, declaring that the TPNW does not constitute customary international law, and should ensure and demonstrate the support of a significant number of states for statements it makes on matters of customary international law.*
22. UNA-UK is concerned by the UK’s interpretation of the relative importance of the three pillars of the NPT. In her oral evidence to this inquiry, the Acting Director for Defence and International Security at the Foreign and Commonwealth Office said “On the equivalence between the pillars, the Non-Proliferation Treaty, by its title, was originally a non-proliferation treaty. The idea is that there are other pillars. They are part of the bargain, but the original concept of the treaty is one of non-proliferation.”
23. UK expressions downplaying the disarmament pillar of the NPT devalue the Article 6 bargain at the heart of the NPT and are likely to increase divisions between the N5 and non-nuclear weapons states. In turn, this contributes to a deterioration in the health of the NPT. Contesting the co-equality of the pillars of the NPT is factually incorrect – all articles of the treaty are equally legally binding. Such statements are irreconcilable with UN guidance on the matter: the Secretary-General stated in 2018 “Non-proliferation and disarmament are two sides of the same coin. Together, they constitute a reciprocal legal arrangement between the nuclear and non-nuclear states. Reversal on one side will lead to reversal on the other.”¹⁶
 - *The UK should desist from statements which may be perceived to devalue or contest the equal standing of any pillar or Article of the NPT, and, at an early opportunity, reaffirm the co-equality of the three pillars of the NPT*

The role of the UK

24. Since modest stockpile reductions announced in 2010, the UK has done little (beyond work on verification) to demonstrate its commitment to nuclear disarmament obligations under Article 6 of the NPT. Notwithstanding the decision supported by parliament to renew the UK’s Trident nuclear weapons system, there are multiple unilateral steps the UK should consider which are compatible with the manifesto commitments of all major UK parties and which would help restore faith in the bargain at the heart of the NPT.

¹³ <https://www.gov.uk/government/news/uk-statement-on-treaty-prohibiting-nuclear-weapons>

¹⁴ Article 38(b) <https://treaties.un.org/doc/source/docs/charter-all-lang.pdf#page=23>

¹⁵ We discuss this in our evidence to the Foreign Affairs Committee on the Responsibility to Protect <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/responsibility-to-protect-rtp-and-humanitarian-intervention/written/82717.pdf> (paragraphs 33-39)

¹⁶ <https://www.una.org.uk/news/our-world-going-backwards-secretary-general-announces-agenda-disarmament-against-troubling>

- *The UK should make concrete progress on its Article 6 NPT commitment to by taking unilateral steps to disarm including the following which compatible with the manifesto commitments of all major UK political parties, inter alia:*
 - *Explore further reductions in overall numbers of nuclear warheads;*
 - *Adopt unambiguous policy of no first use;*
 - *Strengthen negative security assurances to states without nuclear weapons;*
 - *Plan for a denuclearised UK security policy by instructing the MOD to make alternative security arrangements that would allow the UK at some point in the future to transition to a nuclear-free national security strategy.*
- *The UK should respond positively and promptly to the UN High Representative for Disarmament Affairs initiative to include a ministerial segment at the UN2020 conference*
- *The UK Government should have a meaningful public consultation on the UK's next National Security Strategy, including on the underlying assumptions upon which the UK bases its requirement for a nuclear strike capability*
- *Parliament, including its committees, should provide support and scrutiny on the development of government policy in this area, and work to make the UK public more aware of the UK's commitments*

The P5 / N5

25. The UK's communications and absence from certain discussions on multilateral disarmament over many years exacerbates pre-existing tensions with regards to the bargain at the heart of the NPT. Without disarmament the NPT becomes merely an instrument for cementing the nuclear status quo. This places the N5 in a position of historical privilege no longer reflective of global power dynamics, and denies emerging powers – many of them former colonies – the chances made available to the powers of yesteryear – many of them former empires. It thereby suggests that it is not nuclear weapons themselves that pose a risk, but merely those weapons being controlled due to mechanisms other than historical privilege. This attitude isn't just dangerous but is very unpopular internationally and does considerable damage to the UK's political capital.
- *The UK should improve relations with non-nuclear states by ensuring that its communication around proliferation makes clear that the existence of nuclear weapons of any form, and owned by any state, poses a global catastrophic risk to mankind. It should recognise the historical privilege that caused it to become a nuclear state, and that with this privilege comes the responsibility to take steps towards disarmament, without which it is neither reasonable nor realistic to expect emerging powers to refrain from proliferation*
26. UNA-UK uses the term "N5" not "P5" to describe the five recognised nuclear states under the NPT to avoid any misinterpretation that there is link between the privileges or responsibilities bestowed upon the five permanent members of the UN Security Council under the UN Charter and the ownership of nuclear weapons. One is not dependent on the other and it is important that nuclear weapons are not presumed to be in any way legitimised by or a requirement to perform the duties of a P5 member.

Recommendations

The Committee should call on the UK to publish (in unclassified format as appropriate) all research conducted by the UK on the humanitarian and environmental consequences of a nuclear detonation (Paragraph 15)

The UK should commit to attending all multilateral meetings on nuclear disarmament. Objections to the substance of any such meeting should be made from within the room (Paragraph 16)

The UK should adopt a constructive approach towards the TPNW and acknowledge it as a legitimate part of the rules-based international system. Within this approach, the UK should:

- **Announce the intention to attend any future Meeting of States Parties of the TPNW as an observer, to follow developments and avoid misconceptions;**

- Provide technical expertise and other input within the TPNW framework where relevant, for example on: discussions of verification issues that will take place and on which the UK continues to do substantial work; and on activities to address ongoing human and environmental harm from past nuclear testing;
- Until such time that it becomes a State Party of the TPNW, voluntarily implement Article 6 of the TPNW on victim assistance and environmental remediation and publish details of actions taken;
- Foster a dialogue with countries and organisations working on the TPNW on how the Treaty can make an effective contribution to disarmament, including through making a positive, reinforcing impact on the disarmament pillar of the NPT. (Paragraph 18)

The UK should adopt a policy commitment to ultimately become a State Party to the TPNW (Paragraph 18)

The UK should follow Sweden's lead, both by embarking upon an independent or public consultation on the consequences of a possible future implementation of the TPNW, and by looking for constructive ways to promote development of the Treaty. In both cases this would demonstrate engagement with the process and would be well received by non-nuclear states, but would not require any commitment to ratification (Paragraph 19)

The UK should ensure that its communications accurately reflect the reality that customary international law is formed and modified through the actions and declarations of a significant number of states, and that as such the role the United Kingdom can play in its development is that of one voice among equals. The UK should refrain from unilaterally, or with minimal support, declaring that the TPNW does not constitute customary international law, and should ensure and demonstrate the support of a significant number of states for statements it makes on matters of customary international law (Paragraph 21)

UK should desist from statements which may be perceived to devalue or contest the equal standing of any pillar or Article of the NPT, and, at an early opportunity, reaffirm the co-equality of the three pillars of the NPT (Paragraph 23)

The UK should make concrete progress on its Article 6 NPT commitment to by taking unilateral steps to disarm including the following which compatible with the manifesto commitments of all major UK political parties, inter alia:

- Explore further reductions in overall numbers of nuclear warheads;
- Adopt unambiguous policy of no first use;
- Strengthen negative security assurances to states without nuclear weapons;
- Plan for a denuclearised UK security policy by instructing the MOD to make alternative security arrangements that would allow the UK at some point in the future to transition to a nuclear-free national security strategy. (Paragraph 24)

The UK should respond positively and promptly to the UN High Representative for Disarmament Affairs initiative to include a ministerial segment at the UN2020 conference (Paragraph 24)

The UK Government should have a meaningful public consultation on the UK's next National Security Strategy, including on the underlying assumptions upon which the UK bases its requirement for a nuclear strike capability (Paragraph 24)

Parliament, including its committees, should provide support and scrutiny on the development of government policy in this area, and work to make the UK public more aware of the UK's commitments (Paragraph 24)

The UK should improve relations with non-nuclear states by ensuring that its communication around proliferation makes clear that the existence of nuclear weapons of any form, and owned by any state, poses a global catastrophic risk to mankind. It should recognise the historical privilege that caused it to become a nuclear state, and that with this privilege comes the responsibility to

take steps towards disarmament, without which it is neither reasonable nor realistic to expect emerging powers to refrain from proliferation (Paragraph 25)