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'Another Pious Gesture': The Kellogg-Briand Pact and its Lessons for the Treaty on the Prohibition of Nuclear Weapons Disarmament

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Introduction

What do two treaties signed nearly 90 years apart have in common, and why should their comparison hold any significance for nuclear policy today? There is great value, I believe, in comparing the Kellogg-Briand Pact (1928) and the Treaty on the Prohibition of Nuclear Weapons (2017), not just for the historical value of noting their striking parallels, but for the purpose of recalling some basic – but often forgotten – truths about war and peace generally, and arms control specifically.

This essay will first briefly describe each treaty's history and goals before turning to a structured comparison of the similarities between the two movements which advocated for their ratification. To conclude, the essay will apply the "lessons learned" from the Kellogg-Briand Pact to assess the prospects for success of the Treaty on the Prohibition of Nuclear Weapons (TPNW).



The Origins of the Kellogg-Briand Pact and the Treaty on the Prohibition of Nuclear Weapons

The origins of the Kellogg-Briand Pact lie in French Foreign Minister Aristide Briand's initial proposal, in April 1927, to negotiate a bilateral commitment to "outlaw war" between France and the United States. The United States responded by proposing a treaty open to all states on the renunciation of offensive war as a matter of national policy. Widespread popular support internationally led U.S., French, German, U.K., Italian, Japanese, and other states' representatives to sign the Kellogg-Briand Pact, or the Treaty for the Renunciation of War, in 1928. The pact aimed to create a global norm against war as a tool of state policy against another state, with the eventual goal of decreased armaments when possible. Ultimately, 63 states would sign on to the pact.¹ Within a couple years however, state signatories Japan and Italy separately began wars of conquest; and by 1940, meetings held to discuss the state of the Kellogg-Briand Pact dissolved as World War II raged throughout Europe and the Pacific.

The Kellogg-Briand Pact contains two substantive articles: *Article I*: The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.; *Article II*: The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Nearly 90 years later, the Treaty on the Prohibition of Nuclear Weapons grew out of the confluence of efforts by state and non-state actors to emphasize the humanitarian impact of nuclear weapon use. This effort was first codified at the 2010 Non-Proliferation Treaty conference and reinforced by multiple subsequent U.N. resolutions and multilateral conferences.² Eventually these efforts produced the Treaty on the Prohibition of Nuclear Weapons which opened for signature in September 2017 and has 23 state parties so far, with 50 needed to enter into force. No nuclear-armed state has signed, or likely will sign, the treaty. Since the TPNW has 70 signatories currently, it appears likely that the treaty will come into force in the near future.

The TPNW contains 20 Articles, but Article 1 adequately summarizes the general purpose of the treaty:

Article 1 *Prohibitions*

1. Each State Party undertakes never under any circumstances to:
 - (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;



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- (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
- (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
- (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;
- (g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.³

These prohibitions, and other required actions contained within the treaty, are meant to create an international norm, or stigma, against all aspects of nuclear weapons except their destruction.

Similarities between the Kellogg-Briand Pact and the Treaty on the Prohibition of Nuclear Weapons

There are five striking parallels between the two treaties, despite the great separation in time. These parallels are not just historically interesting, but they contribute directly to evaluating the prospects for the efficacy of the TPNW in the near-term, and the prospects for disarmament and peace in the long term. Five of the relevant similarities are examined briefly below.

The Absolute Necessity of Action

Supporters of the Kellogg-Briand Pact and the TPNW both argued that their treaty was absolutely necessary to the prevention of further catastrophe. Following the unprecedented destruction of the First World War state leaders felt compelled to do *something* that might prevent further societal conflagrations. As U.S. Senator William Borah, the pact's strongest supporter and drafter in the Senate, stated, "Sink or swim, live or die, something like this treaty is the only way to escape from the impending doom."⁴ Frank Kellogg, U.S. Secretary of State and counterpart to French Foreign Minister Briand, stated at the time, "I have said before and I wish to repeat today, with all the solemn emphasis which I can place upon my words, that Western civilization would not survive another such conflict [WWI], but would disappear in the universal chaos."⁵ Indeed, in general the prevailing notion among state leaders at the time was that humanity may not survive in recognizable form another war as destructive as "The Great War." Proponents of the Kellogg-Briand Pact viewed it as a way to avoid such a fate.



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Similarly, proponents of the Treaty on the Prohibition of Nuclear Weapons have argued that nuclear weapon prohibition, and eventual elimination, is the *only* rational choice for the world. As Beatrice Fihn, Executive Director of the International Campaign to Abolish Nuclear Weapons, stated at her Nobel Peace Prize acceptance speech: “For it is insanity to allow ourselves to be ruled by these weapons. Many critics of this movement suggest that we are the irrational ones, the idealists with no grounding in reality. That nuclear-armed states will never give up their weapons. But we represent the only rational choice. We represent those who refuse to accept nuclear weapons as a fixture in our world, those who refuse to have their fates bound up in a few lines of launch code. Ours is the only reality that is possible. The alternative is unthinkable.”⁶ She continues, “It is not irrational to think nuclear states can disarm. It is not idealistic to believe in life over fear and destruction; *it is a necessity.*”⁷ Again, inaction – according to the treaty proponents – is unacceptable and should not even be considered a possibility.

Significant Support Internationally

Leading supporters of both treaties have also emphasized the importance of the broad support of multiple states for their treaties. This support was taken not only to show the rightness of the treaty, but as proof of its durability. As U.S. President Herbert Hoover stated in 1929, not long after the first anniversary of the signing of the Kellogg-Briand Pact:

... we can say with truth that the world is becoming more genuinely inclined to peace; that the forces of imperial domination and aggression, of fear and suspicion are dying down; that they are being replaced with the desire for security and peaceful development. The old objectives of tortuous diplomacy are being replaced with frank and open relations directed to peace. There is no more significant step in this progress than the solemn covenant that civilized nations have now entered, to renounce war and to settle disputes by pacific means. It is this realignment of the mind of the world that gives the hope of peace.⁸

Hoover believed that the “realignment of the mind of the world” was manifest by the over 40 states that had agreed to the Kellogg-Briand Pact at that time – proof of the treaty’s value and a good sign for its future prospects. At the time of its signing, the Kellogg-Briand Pact polled at about 95% approval rating in Europe.⁹ Kellogg’s acceptance of the Nobel Peace Prize in 1930, the ultimate international recognition, further solidified his belief in the treaty’s value.

Similarly, as noted above, Beatrice Fihn – the leader of the non-governmental organization International Campaign to Abolish Nuclear Weapons (ICAN) – received the Nobel Peace Prize in 2017 on behalf of her organization, a major symbol of international support. In her acceptance speech, she stated, “As the culmination of this grassroots effort, through the action of ordinary people, this year the hypothetical marched forward towards the actual as 122 nations negotiated and concluded a UN treaty to outlaw these weapons of mass destruction...



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Monumental strides forward never begin with universal agreement. With every new signatory and every passing year, this new reality will take hold.”¹⁰ The unspoken, but implicit, assumption is that the breadth of state support is indicative of its moral and political value and validity.

Emphasis on the Power of Persuasion and Public Opinion

As a natural corollary to proponents’ emphasis on widespread state support, both treaties’ supporters also share an unshakeable belief in the power of persuasion for the human mind and the influence of public opinion on state leaders. For example, U.S. Senator William Borah stated that “... all treaties may be broken. But unwearily we go forward in the hope that ultimately the human mind will be trained away from war.”¹¹ Similarly, Secretary Kellogg stated, “I know there are those who believe that peace will not be attained until some super-tribunal is established to punish the violators of such treaties, but I believe that in the end the abolition of war, the maintenance of world peace, the adjustment of international questions by pacific means will come through the force of public opinion, which controls nations and peoples – that public opinion which shapes our destinies and guides the progress of human affairs.”¹² Senator Borah also wrote that the United States was “content to pronounce the sentence of outlawry against war and to trust the conscience of nations to make it operative.”¹³

President Herbert Hoover and Senator Borah commonly testified to the superiority of public opinion over threats of force – both as moral and political tools. In contrast to the League of Nations which allowed force to be used in the pursuit of peace, supporters of the Kellogg-Briand Pact emphasized that the use or threat of force – even in pursuit of peace – was wrong and counterproductive. Borah stated that, “... the greatest factor in international affairs today is the moral force of the masses of mankind...”;¹⁴ and Hoover agreed stating, “The European nations have, by the covenant of the League of Nations, agreed that if nations fail to settle their differences peaceably then force should be applied by other nations to compel them to be reasonable. We have refused to travel this road. We are confident that at least in the Western Hemisphere public opinion will suffice to check violence. This is the road we propose to travel... in order that action may be stayed and that the aggressor may be subjected to the searchlight of public opinion.”¹⁵

Similarly, supporters of the TPNW believe that public opinion is perhaps the greatest driving force of international norms. As Beatrice Fihn has stated, “To all citizens of the world: Stand with us and demand your government side with humanity and sign this treaty. We will not rest until all States have joined, on the side of reason.”¹⁶ In addition, she has also stated, “While it's true that civil society has a freer hand to influence policy in more open democracies such as the U.S., the U.K., France and India, as opposed to China or Russia, it is also true that international norms influence all states. That is our best chance at influencing Russia's behavior.”¹⁷ According to proponents of both treaties, public opinion would be sufficient to pressure their respective governments to abide by the treaties’ articles, influence those outside



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of the treaties to the point where they join, and stigmatize those who quit and/or break the treaties.

Meant to be a First Step towards Durable Norm

Lest critics of the treaties note their ineffectiveness, supporters of the Kellogg-Briand Pact and the Treaty on the Prohibition of Nuclear Weapons both stated that even if not initially successful, both treaties were the first necessary steps towards creating a durable international norm. For example, Secretary Kellogg stated in his Nobel Peace Prize acceptance speech:

Warned by the disaster of the last great war, the statesmen of all nations have been taking measures to prevent the return of another such calamity. These measures may not constitute an absolute guarantee of peace, but, in my opinion, they constitute the greatest preventive measures ever adopted by nations. It is not to be expected that human nature will change in a day; perhaps it is too much to expect that the age-old institution of war, which has, through the centuries, been recognized by international law as a sovereign right and has darkened the pages of history with the story of blood and destruction, will be at once abolished, but people of all nations should be encouraged by the great progress which has been made since the war in the furtherance of international peace.¹⁸

Senator Borah also argued as far back as 1924 that a treaty like the Kellogg-Briand Pact would only be a “first step.”¹⁹

In like manner, proponents of the TPNW believe that while the treaty itself will not directly eliminate nuclear weapons, it will begin a process of delegitimization and the formation of an international norm against states which possess them:

The UN nuclear weapon ban treaty complements the prohibitions on biological and chemical weapons, anti-personnel land mines and cluster munitions, and reinforces various other legal instruments on nuclear weapons, including the non-proliferation treaty of 1968. It strengthens the global taboo against the use and possession of nuclear weapons – challenging any notion that these are legitimate, acceptable weapons for certain nations. Underpinning the decision by governments and civil society to pursue the ban was our belief that changing the rules regarding nuclear weapons would have a major impact even beyond those nations that would formally adopt the treaty at the outset. This belief stemmed from experience with treaties outlawing other weapons, which have established powerful norms that greatly influence the policies and practices of states that are not yet parties to them. ICAN is confident that the new treaty will spur long overdue progress towards disarmament when the norms it enshrines take hold.²⁰



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Additionally, “A ban on nuclear weapons is not about unilateral disarmament of nuclear arsenals, it is about creating an international norm against the use and possession of nuclear weapons. A clear and unequivocal rejection of the possession and use of nuclear weapons will make it harder for all states to continue investing in the maintenance and development of nuclear weapons.”²¹

Beatrice Fihn has observed that the TPNW is not the final step in a process: “Now we need to work on the implementation. The treaty has always been the tool, not just the goal in itself. First, we need to build a strong norm, and that comes through getting as many countries to sign and ratify this treaty as possible. Also, parallel to that is to challenge behavior that lies outside this new norm.”²²

No Explicit Commitment to Sanctions or Punishments for Enforcement

A final similarity between the Kellogg-Briand Pact and the TPNW is their proponents’ reluctance to address the issue of treaty violations and sanctions against the violators. As stated above, President Hoover and Senator Borah believed even economic sanctions could lead to war, and thus relied on the force of public opinion and moral suasion against states party to the treaty which might violate it. There was a reason, however, to elevate public opinion over the threat of punishment as the famous progressive philosopher John Dewey wrote to the attorney (and one of the drafters of the Kellogg-Briand Pact) Salmon Levinson, “It occurred to me that the statement of our case might be simpler if you left out everything about war being made a crime; and stuck simply to taking it out from under the protection of law. The reason is simply a talking point; the moment you speak of crime, they retort that crimes have to be opposed and punished. The mental association of crime, criminal police and punishment is very fixed.”²³ The language on criminalization of war was thus left out of the treaty.

In examining the Treaty on the Prohibition of Nuclear Weapons, there are only two articles that require or imply a duty on behalf of states party to the treaty to take against those outside the treaty or exiting the treaty. First, Article 12 states: “Each State Party shall encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty.” The actions required by the verb “encourage” are not defined but would seem to exclude coercive measures such as economic sanctions or threats of force. Article 17 discusses the procedure should a state utilize its national right to withdraw from the treaty, and states: “Such withdrawal shall only take effect 12 months after the date of the receipt of the notification of withdrawal by the Depositary. If, however, on the expiry of that 12-month period, the withdrawing State Party is a party to an armed conflict, the State Party shall continue to be bound by the obligations of this Treaty and of any additional protocols until it is no longer party to an armed conflict.”

Christopher Ford, U.S. Assistant Secretary of State for International Security and Nonproliferation, has examined this clause and its respective requirements on states party to



the treaty and found: “Under the terms of the ‘ban,’ a country can withdraw from the treaty only if ‘extraordinary events ... have jeopardized the supreme interests of its country.’ If an aggressor attacks that country during the 12 month period before such withdrawal becomes effective, however, the country will be prohibited from withdrawing for so long as such a conflict continues... A State Party thus might, for instance, be required to suffer unlimited attack by overwhelming conventional military force without any lawful recourse to withdrawal from the ‘ban.’”²⁴ Other state parties, by extension, would be barred, it appears, from militarily assisting the country under attack.

Proponents of the TPNW also acknowledge there is no requirement for action against those outside the treaty or potential violators – with the possible exception noted above. As Beatrice Fihn has answered, when asked how signatories should change their behavior once the treaty goes into effect: “I think there is not going to be a drastic change once it enters into force... It’s not going to be a drastic change. Normative change rarely goes fast in that way. It’s slow progress, it’s trying to make it as uncomfortable and difficult as possible for countries to continue to have nuclear weapons unchallenged... In tactical in terms, I doubt anyone will sanction the United States. But ratifying countries are prohibited from participating in any part of the production of nuclear weapons.”²⁵ When asked what consequences there should be for states that retain their nuclear weapons outside the treaty, she listed, “Pressure, stigma, loss of reputation, and public pressure domestically.”²⁶

Summary

While a number of other similarities between the Kellogg-Briand Pact and the TPNW could be noted, including the use of language of morality, the sensitivity to being labelled “idealist,” and the belief that if the United States did not endorse the treaties it would be ostracized internationally – the primary similarities listed above demonstrate how both treaties owe their origins to the rich intellectual tradition of “Idealism.” Idealism includes the belief that international actors, state leaders in particular, can – through enlightened reason and international institutions – take meaningful and durable steps to transform the international security environment to something more benign, either minimizing or eliminating the security dilemma. The core focus of Idealism is “what should be,” whereas, in contrast, Realism focuses on “what is.”

The question then becomes, if the Treaty on the Prohibition of Nuclear Weapons is so similar to the Kellogg-Briand Pact, is it doomed to suffer the same fate of demonstrable irrelevance?

Implications for the Prospects of the Treaty on the Prohibition of Nuclear Weapons

When New York Governor Alfred E. Smith was campaigning for the Democratic presidential nomination in 1928, Franklin Roosevelt delivered a speech in support of his nomination, and



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inserted the following barb against Republican support of the Kellogg-Briand Pact: “If the vision of real world peace, of the abolishment of war, ever comes true, it will not be through the mere mathematical calculations of a reduction of armament program nor the platitudes of multi-lateral treaties piously deprecating armed conflict.”²⁷ The label “pious” stuck to the efforts of proponents of the treaty and particularly irked President Hoover, who stated on the first anniversary of signing the Kellogg-Briand Pact: “The Kellogg Pact has focused the moral enthusiasm of the world upon the cause of peace. But if it is not to become another pious gesture it must be followed by practical and sincere measures, and the first among them is a turn of the tide of increasing armament.”²⁸

So can the Treaty on the Prohibition of Nuclear Weapons avoid becoming just “another pious gesture?” I will briefly outline three reasons why I believe the TPNW is destined for the same fate as the Kellogg-Briand Pact – another pious but futile effort at disarmament. First, TPNW proponents confuse disarmament with peace and the role of treaties in that process. Second, treaties that require little of their members, in addition to a lack of incentive for sanctions against violators, make accession and withdrawal equally painless. Third, supporters of the TPNW underestimate the value national leaderships place upon nuclear deterrence. Each reason is examined briefly below.

Disarmament before Peace – The Cart before the Horse

“It is the greatest mistake to mix up disarmament with peace. When you have peace you will have disarmament.”²⁹ So stated Winston Churchill in 1934 and his words remain true today. While the TPNW itself is not meant to disarm nuclear states, its explicit goal is to create an international environment that pressures nuclear-armed states to disarm – without this end goal the treaty would lose its value. Yet proponents of the TPNW fail to recognize that states generally only disarm when the political conditions and threat perceptions allow it. Why was there a burst of arms control success at the end of the Cold War? The answer is because political conditions had changed from hostility to partnership. Arms control agreements were products, not producers of the peace.

As the eminent strategist Colin Gray has noted, arms control treaties are necessarily reflections of the political environment at the time they were negotiated and signed – limiting their adaptability to a dynamic security environment. He goes on to state:

Sovereign polities simply cannot be locked into arms control structures that express yesterday’s political assumptions and power relations. History, theory, and common sense suggest that an arms control regime negotiable only under the ephemeral conditions of great good will is unlikely to have the features that would enable it to survive, let alone accomplish anything useful for international security, in stormy political weather. Indeed, the arms control regime that supposedly locks into place military relationships which are, or are believed to be, asymmetrically disadvantageous



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to a Japan and Germany in the early 1930s or a Russia in the mid 1990s itself will fuel political tensions. An arms control structure itself can become a part of the problem rather than a part of the solution.³⁰

In other words, arms control agreements do not have independent power within themselves over political decision-makers, their power is limited by the political context in which they exist. This has been made manifest most recently by Russia's decisions not to abide by its Cold War arms control commitments, most notably the Presidential Nuclear Initiatives (PNIs) and the Intermediate-Range Nuclear Forces (INF) Treaty, in addition to the U.S. withdrawal from the Anti-Ballistic Missile (ABM) Treaty; political and security perceptions changed in Russia and the United States, so the leaders' judgments on the value of the previous commitments also changed.

Moreover, attempting – and even succeeding at ratifying – arms control agreements before political conditions are right can lead to serious security consequences afterward, as Gray stated. Some arms control agreements can appear to create norms which states begin to assume while building their defense strategies, but when those norms shift, a state's fundamental planning assumptions also come under threat. For example, most of the opposition to the Kellogg-Briand Pact in the U.S. Senate centered on the question of whether the treaty would infringe on the U.S. "Monroe Doctrine" – which stated that the United States considered the Western hemisphere in its sphere of interest and would thus oppose "European meddling" in it. U.S. Secretary of State Kellogg reassured the Senators that the "Monroe Doctrine" – a doctrine of self-defense in his words – would not be affected by the treaty, and then went even further, stating: "Self defense does not mean simply defense of the United States proper. It means any interests or rights the United States may have."³¹ Thus, as long as war was defined as "self defense" it was allowed under the treaty. U.S. Senator Borah even stated that it was up to the United States "to determine, upon any particular state of facts or any set of conditions, as to what constitutes a defense of its rights." Borah acknowledged this as a flaw in the treaty, but "there is no way to bridge that chasm."³²

This self-interested and loosely defined reading of the treaty, publicly stated, had the unintended consequence of actually encouraging the first major breach of the Kellogg-Briand Pact only a little more than a year later. Japanese officials, who had encouraged their leaders' signing of the treaty earlier, read the statements by U.S. Secretary Kellogg, along with other statements by the United Kingdom and France, about maintaining freedom of action in areas and interests deemed essential to "self-defense," and decided that the pact was "elastic enough to rationalize future Japanese actions in China."³³ In this case, the negotiation and debate of the Kellogg-Briand Pact created an opportunity in the mind of some Japanese officials that "self-defense" can be extended under the treaty to areas of interest – thus allowing offensive war. Japanese actions caught the world off guard, and especially U.S. officials who were still planning defenses in the belief a norm against war would hold.



In a similar manner, the United States and Great Britain based their negotiating positions at the Washington and London naval conferences (1921-22, and 1930/1936 respectively) on the expectation of continued peace and perceived power of moral suasion, eventually manifest in the Kellogg-Briand Pact. As one historian has noted, “The American statesmen were basing their approach to disarmament and world order on the moral force of the Kellogg-Briand Pact, not on the imperatives of national objectives and their implementation. Japan’s exploitation of this approach began the following year [1931] in Manchuria.”³⁴ What these treaties professed to bring was peace, but, in fact, the arms they limited were precisely the kind needed to deter future war. As Colin Gray notes: “Unfortunately for international order, however, security against invasion by treaty partners was not the key problem for the period. Instead the Western powers needed to be able to extend deterrence to protect China from Japanese imperialism. The [naval] arms limitation treaties denied the United States and Britain that margin of naval superiority necessary to face down, or defeat, Japan in the western Pacific. The kind of stability enhanced by the Washington system was not conducive to international security.”³⁵ Or, one might add, the prevention of war. Again, disarmament efforts cannot produce peace, and may in fact be harmful to peace, if the security perceptions and political conditions are not suitable.

The Treaty on the Prohibition of Nuclear Weapons may therefore harm the prospects for peace by essentially labeling all nuclear-armed states as morally deficient and outside the law, seeking to sow division within the NATO alliance, especially by calling for immediate nuclear disarmament. Painting the United States and NATO as morally and politically equivalent to states like North Korea can do nothing but sow division. As Beatrice Fihn recently stated, “... I often say to those who argue that there are good and bad nuclear-armed states: the weapons are the problem, not the leaders.”³⁶ Yet one need only look at each state’s history and rhetoric to discern this is not the case. For example, as NATO stated in response to the TPNW: “The fundamental purpose of NATO’s nuclear capability is to preserve peace, prevent coercion, and deter aggression.”³⁷ In contrast, as one of many examples, North Korea threatened a “preemptive and offensive nuclear strike” against the United States and South Korea in protest of joint military drills.³⁸ Encouraging U.S. nuclear disarmament in the face of threats like North Korea, China, or Russia could easily place international security at risk and diminish the prospects for sustaining peace.

Requiring Little, Receiving Little

In a famous phrase found in the Bible, Luke 12:48, Jesus said, “From everyone who has been given much, much will be demanded...” In contrast, treaties like the TPNW suggest that “from whom little is required, little is expected.” Essentially, many state leaders that signed the TPNW could easily do so because there is no cost or obligation on their part to ratify the treaty and they gain a bit of a “good international citizen” reputation in the process. The fact is, we cannot know how committed these signatory states are to denuclearization since the treaty imposes no further obligations on them to enforce it – just like the Kellogg-Briand Pact. If



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nuclear weapons or war were actually “illegal,” signatory states would be duty-bound to punish the offending states, if there were any mechanisms for enforcement.

Supporters of the TPNW, however, remain strangely silent on the next steps for states party to the treaty as well as those nuclear-armed states not party to the treaty.³⁹ Should a nuclear-armed state join the treaty and unilaterally eliminate all of its nuclear weapons? Or should it hold out until all other nuclear-armed states agree to do so in unison? Should states party to the treaty simply admonish nuclear-armed states with letters expressing discontent? Or should they impose financial sanctions and cut off all trade? If nuclear weapons are such an existential threat to all of humanity, why aren't all options – including military force – on the table to disarm states possessing nuclear weapons? In short, there are no implementation or enforcement provisions by which states could strengthen the norm TPNW supporters hope to create.

The reason supporters of the TPNW do not address these questions is likely because to do so would illustrate the impotence of the treaty itself – as noted by John Dewey above, to call something criminal is to necessarily bring up the question of criminal punishment. Are developing states really willing to cut themselves off economically from two of the largest markets in the United States and China to express their displeasure about the existence of nuclear weapons? The question answers itself. If a norm is to be durable in the international system, it requires costly commitments on behalf of the supporters. If states are not willing to pay the cost, their expressed sentiments mean little, as was demonstrated by the failure of states party to the League of Nations and the Kellogg-Briand Pact to prevent the outbreak of World War II.

Ironically, even though treaties like the Kellogg-Briand Pact and the Treaty on the Prohibition of Nuclear Weapons touted the breadth of their political support internationally, it turns out ratification of a treaty does not actually signal commitment to it. Historians of the Kellogg-Briand Pact note that although the U.S. Senate passed the treaty with a vote of 85-1, “In public and private statements, it was apparent that few senators were wholly convinced of the immediate effectiveness of the pact. At the same time, all were aware of the hold on the popular mind which the treaty had achieved, and a number of them made much of the people's part in the peace program.”⁴⁰ One of the most eloquent critics of the treaty, Senator James Reed, stated his belief that the treaty would ultimately fail because “the armies of earth have marched across the realm of time over highways carpeted by treaties of amity.”⁴¹ When asked why he then voted in favor of the treaty after such passionate criticism, Senator Reed replied, “Do you think I want to be hung in effigy out in Missouri?”⁴² Again, most of the U.S. Senate knew the treaty legally committed the United States to nothing substantial and saw their vote as an opportunity to bolster their *bona fides* among their constituents – no belief or commitment to the treaty's goals required. In fact, the Senate passed a bill on the U.S. Navy obtaining 15 heavy cruisers –



clearly not in line with disarmament wishes – as the first bill of the day, the vote on the Kellogg-Briand Pact came second.⁴³

Similarly, the TPNW requires no serious and durable commitment on the part of its members which cannot be easily reversed, or ignored, when political conditions change. For states to rely on norms, such as denuclearization, the norm must be able to not only survive on a politically sunny, beautiful spring day, but also withstand the worst political storms – even world war – to be considered reliable.⁴⁴ So far in world history, no norm has had such a track record, thus requiring states – especially nuclear-armed states – to rely on their own power to protect their national survival.

Underestimating Value of Nuclear Weapons

The final reason why the Treaty on the Prohibition of Nuclear Weapons is likely to fail in its ultimate goal of complete nuclear elimination is because it fundamentally underestimates the value many national leaderships attach to nuclear weapons. Proponents of the TPNW will respond that that is precisely why the treaty is so important, to dispel the notion that nuclear weapons are essential for state survival. But that will miss the point: many national leaderships do not see nuclear weapons as just another weapon. Rather, they see nuclear capabilities as essential to continued national survival. And national leaderships undoubtedly, and understandably, believe they know more about their national security needs than do proponents of nuclear disarmament.

It is readily apparent that proponents of the TPNW underestimate the value nuclear-armed states attach to their arsenals when they make comparisons like the following: “Nuclear weapons, like chemical weapons, biological weapons, cluster munitions and land mines before them, are now illegal. Their existence is immoral. Their abolishment is in our hands.”⁴⁵ Comparing nuclear weapons to these other weapons, chemical, biological, cluster munitions, and landmines, on its face appears to be an apt assessment.

Yet when one examines each weapon category, it is apparent just how different nuclear weapons are in a state’s value system in comparison. For instance, TPNW supporters have not acknowledged that it is *because* the United States had advanced conventional weapons *and* nuclear weapons that its leaders felt comfortable signing the Chemical and Biological Weapons Conventions. In fact, military leaders as far back as 1969 began having serious doubts about the “military utility” of chemical and biological weapons – and these doubts, combined with a retention of nuclear weapons and a permissive security environment allowed their production to be curtailed and eventually eliminated.⁴⁶

As then-Secretary of Defense William Perry testified, “For obvious reasons we choose not to specify in detail what responses we would make to a chemical attack. However, as we stated during the gulf war, if any country were foolish enough to use chemical weapons against the



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United States, our response would be absolutely overwhelming and devastating. And we do not need chemical weapons to provide an effective deterrent or to deliver an effective response to the use of chemical weapons against our forces.”⁴⁷ Secretary Perry also stated that “advanced conventional weapons” and “nuclear weapons” covered the spectrum of possible responses to a chemical attack and that a response “in-kind” was therefore unnecessary.⁴⁸ Thus it is apparent that possession of a nuclear deterrent actually allowed the United States to reduce and eventually eliminate its reliance on chemical and biological weapons – with the advent of an international norm against chemical and biological weapons playing only a minor role.⁴⁹

In addition, supporters of the TPNW are unwise to compare the ban of nuclear weapons to the ban on cluster munitions and landmines. States like Russia, China, and the United States are not party to the treaties banning cluster munitions or landmines despite over 100 and 160 other states respectively being party to those treaties.⁵⁰ Despite the majority of states in the world approving of these treaties, and some might argue an established norm against these weapons, international public pressure has yet to persuade states like Russia, China, and the United States to join – an indication of the relative lack of power of norms. If these major powers do not accede to these treaties on weapons that may not be deemed essential to their national survival, why should anyone expect them to eventually accede to the Treaty on the Prohibition of Nuclear Weapons, which would ban the weapons *they do see as essential* to their national survival?

Conclusion

It appears, therefore, that the fates of the Kellogg-Briand Pact and the Treaty on the Prohibition of Nuclear Weapons are bound together just as they arose together from the same intellectual ferment of Idealism. Proponents of the two treaties share multiple important similarities; they both: declared themselves the only option for avoiding catastrophe; boasted significant broad support internationally; emphasized the power of persuasion and public opinion; were meant as first steps towards durable international norms; and explicitly rejected placing enforcement requirements on member states to punish violators of the treaties.

Why did the Kellogg-Briand Pact fail and why will the TPNW likely fail? Because they asked party states to commit to norms and actions that may go against their national interests when their security is most threatened, with no effective means or incentives for punishing the breaking of those norms. Although well-intentioned, supporters of the TPNW unfortunately fail to see the full challenge of creating the political conditions necessary for disarmament, have misplaced confidence in the expressions of state support which required no sacrifice, and underestimate the value many national leaderships place in nuclear deterrence. The eventual elimination of nuclear weapons worldwide remains a noble thought, but the time, talent, and energy spent on delegitimizing nuclear weapons now is better applied to creating the political



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conditions required for disarmament to succeed. When the world is at peace, disarmament is sure to follow – but reversing those goals will only result in “another pious gesture.”

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43. The details of how this came about can be found in, Vinson, *William E. Borah and the Outlawry of War*, op. cit., pp. 162-165.

44. Herman Kahn used this same illustration comparing a nation's nuclear deterrent to a building that should work in all sorts of conditions. I gladly acknowledge borrowing this illustration from his *On Thermonuclear War*.

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