



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

2017 Treaty on the Prohibition of Nuclear Weapons

The Treaty on the Prohibition of Nuclear Weapons (TPNW) is the first globally applicable multilateral agreement to comprehensively prohibit nuclear weapons. It is also the first to include provisions to help address the humanitarian consequences of nuclear weapon use and testing. The Treaty complements existing international agreements on nuclear weapons, in particular the Treaty on the Non-Proliferation of Nuclear Weapons, the Comprehensive Nuclear-Test-Ban Treaty and agreements establishing nuclear-weapon-free zones.

The TPNW was adopted by a United Nations diplomatic conference on 7 July 2017 and opened for signature on 20 September 2017. It will enter into force once 50 States have notified the UN Secretary-General that they agree to be bound by it.

What is the purpose and scope of the TPNW?

The TPNW was developed in response to long-standing concerns about the catastrophic humanitarian consequences that any use of nuclear weapons would entail.

The Treaty recognizes that the use of nuclear weapons would be abhorrent to the principles of humanity and the dictates of public conscience, and it comprehensively prohibits nuclear weapons on the basis of international humanitarian law (IHL) – the body of law that governs the use of all weapons in armed conflict. It contains strong commitments to assistance of the victims of nuclear weapon use and testing, and to the remediation of contaminated environments. The Treaty also provides pathways for adherence by all States, including those that

possess, or are associated with, nuclear weapons.

Aren't nuclear weapons already prohibited under international law?

In a 1996 Advisory Opinion,¹ the International Court of Justice concluded that the threat or use of nuclear weapons would generally be contrary to the requirements of the international law applicable in armed conflict, particularly the principles and rules of IHL. However, it left open the question of the lawfulness of threatening to use or using nuclear weapons in an extreme situation of self-defence in which the very survival of a State is at stake. Thus, the Court did not construe IHL to categorically prohibit the use of nuclear weapons.

In addition to the principles and rules of IHL, there are a number of multilateral agreements that

regulate nuclear weapons. However, none of these establishes a comprehensive set of prohibitions applicable at the global level. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is a cornerstone of international law governing nuclear weapons. It prohibits State Parties that do not already have nuclear weapons from developing or acquiring them. State Parties that possessed nuclear weapons at the time of the NPT's adoption are allowed to retain their weapons but are barred from transferring them or helping others to develop or acquire them. All NPT States Parties are required to pursue negotiations on effective measures to advance nuclear disarmament.

A number of treaties also establish parts of the world as nuclear-weapon-free zones. These treaties generally contain

¹ International Court of Justice, "Legality of the threat or use of nuclear weapons", Advisory Opinion, *I.C.J. Reports 1996*, 1996, pp. 226–267.

prohibitions on a wide range of nuclear-weapon-related activities that are applicable in that region. Such treaties are in force in Africa, Latin America and the Caribbean, and Central and South-East Asia.

Until now, nuclear weapons had not been the subject of a globally applicable prohibition treaty that all States could join. The adoption of the TPNW has filled this gap.

What are the main obligations of the TPNW?

Prohibition

It is prohibited under any circumstances to use or threaten to use nuclear weapons (or other nuclear explosive devices). It is equally prohibited to develop, test, produce, manufacture, otherwise acquire, possess or stockpile them (Art. 1.1(a) and (d)).

It is also prohibited for a State Party to transfer nuclear weapons, to receive the transfer of or control over nuclear weapons or to allow the stationing, installation or deployment of nuclear weapons in its territory or at any place under its jurisdiction or control (Art. 1.1(b), (c) and (g)).

Furthermore, it is prohibited to in any way assist, encourage or induce anyone to engage in any activity prohibited by the Treaty (Art. 1.1(e)).

Elimination of nuclear weapons

Within 30 days of becoming a party to the Treaty, a State must submit a declaration to the UN Secretary-General indicating if:

- it has previously possessed nuclear weapons,
- it currently possesses such weapons, or
- there are nuclear weapons of another State in any place under its jurisdiction or control (Art. 2).

The answers to these questions determine the next steps a State Party must take to ensure the elimination of nuclear weapons:

- A State Party that **did not possess nuclear weapons** on the date that the Treaty was adopted (7 July 2017) and has an existing safeguards agreement with the International Atomic Energy Agency (IAEA) must maintain that agreement (Art. 3.1).

If the State does not have safeguards obligations in force, it must conclude a comprehensive safeguards agreement with the IAEA. This agreement must enter into force within 18 months from the date on which the State became a State Party (Art. 3.2).

- A State Party that **possessed nuclear weapons after 7 July 2017 and destroyed them prior to joining the Treaty** must cooperate with an international authority mandated to verify the irreversible elimination of the State's nuclear weapon programme. This authority will be designated by a meeting of States Parties. The State Party must also conclude a safeguards agreement with the IAEA (Art. 4.1).
- A State that **possesses or controls nuclear weapons at the time that it becomes a State Party** must immediately remove its weapons from operational status. It must also destroy them as soon as possible but not later than a deadline to be established by the first meeting of States Parties, in accordance with a legally binding, time-bound plan for the verified and irreversible elimination of the State Party's nuclear weapon programme (Art. 4.2). The State Party must also conclude a safeguards agreement with the IAEA (Art. 4.3).

- A State Party that **has the nuclear weapons of another State on its territory** (via stationing, installation or deployment) must ensure that such weapons are removed as soon as possible but not later than a deadline to be determined by the first meeting of States Parties (Art. 4.4).

Victim assistance and environmental remediation

The Treaty recognizes the suffering and harm caused to the victims of nuclear weapon use and testing as well as the impact on indigenous peoples and the environment.

A State Party with individuals under its jurisdiction who are victims of nuclear weapon use or testing must provide them with medical care, rehabilitation and psychological support, and provide for their socio-economic inclusion (Art. 6.1).

Similarly, a State Party whose territory has been contaminated through nuclear weapon use or testing must take measures towards the environmental remediation of affected areas (Art. 6.2).

International assistance and cooperation

States Parties must cooperate to facilitate the successful implementation of the Treaty. Each State Party also has the right to seek and receive assistance to fulfil the Treaty's requirements (Art. 7.1 and 7.2).

This cooperation is fortified by a requirement to assist States Parties affected by nuclear weapons. Each State Party in a position to do so must provide technical, material and financial assistance to States Parties that have been affected by nuclear weapon use or testing, to help them implement the Treaty. They must also assist the victims of nuclear weapon use or testing (Art. 7.3 and 7.4).

Assistance can be provided through the United Nations,

international or regional organizations, non-governmental organizations, the International Red Cross and Red Crescent Movement or on a bilateral basis (Art. 7.5).

What must a State do to join the Treaty?

The Treaty remains open for signature indefinitely and can be signed at UN headquarters in New York.

The Treaty will enter into force 90 days after the deposit of the 50th instrument of ratification, acceptance, approval or accession with the UN Secretary-General, the Treaty's depositary.

A State that wishes to be bound by the Treaty must submit an instrument of ratification, acceptance, approval or accession to the UN Secretary-General. It will become binding upon that State 90 days later or, for the first 50 States that ratify, upon the entry into force of the Treaty.

What must States do to implement the Treaty and how is compliance ensured?

Adoption of domestic measures

Each State Party is required to take all necessary measures to implement the Treaty's provisions (Art. 5). This includes the adoption of legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any violations committed by persons, or on territory, under its jurisdiction or control (Art. 5.2). To this end, depending on the State's domestic law and procedure, specific domestic legislation may need to be adopted and the regulations governing the armed forces amended.

In addition, States must take measures towards the elimination of nuclear weapons, the provision of victim assistance, environmental remediation, and international

assistance and cooperation in accordance with the respective obligations under the Treaty (Art. 5).

Meetings of States Parties

The implementation of the Treaty is monitored through meetings of States Parties. A first meeting of States Parties will be convened within one year of the Treaty's entry into force. These meetings will assess the Treaty's status and implementation and take decisions to advance the elimination of nuclear weapons (Art. 4). Additional meetings will be held on a biennial basis, unless States Parties decide otherwise (Art. 8.1 and 8.2).

What support is available for joining and implementing the TPNW?

The status of signatures and ratifications of the TPNW is available online: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-9&chapter=26&clang=en.

The ICRC has prepared publications to assist States in understanding the Treaty's requirements. This includes a ratification kit describing the procedures that a State must follow in order to sign, ratify, accept, approve or accede to the TPNW. The kit also contains model instruments of signature and adherence for States to deposit with the UN Secretary-General. These materials can be found on the ICRC website (www.icrc.org).

The ICRC is ready to assist States in implementing the TPNW, within the scope of its mandate and expertise in IHL.

The ICRC's delegations throughout the world and its Department of International Law and Policy in Geneva can provide guidance on implementing the Treaty's requirements in domestic legislation and any further information or clarification that may be required.

Assistance to implement various aspects of the Treaty may also be provided through National Red Cross and Red Crescent Societies and the International Federation of National Red Cross and Red Crescent Societies.

A number of other organizations, such as the United Nations Office for Disarmament Affairs, have also prepared important tools to help States understand and implement the TPNW.

04.2018