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2017 Treaty on the Prohibition of Nuclear Weapons

Signature and Ratification Kit



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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.

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STATE PARTICIPATION IN AND IMPLEMENTATION OF THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

The Treaty on the Prohibition of Nuclear Weapons comprehensively bans nuclear weapons, and establishes a framework to advance their elimination. It also contains provisions to provide assistance to those who have been affected by the use or testing of nuclear weapons and to help restore the natural environment. The Treaty was developed in response to long-standing concerns about the catastrophic humanitarian consequences that any use of nuclear weapons would entail and the growing risks of nuclear weapon detonation by intent, accident or miscalculation.

Ensuring that the Treaty fulfils its promises requires the widest possible participation and implementation among States. This paper describes the procedures that most States have to follow in order to ratify, accept, approve or accede to the Treaty. It also contains model instruments that States can use to sign and express their consent to be bound by the Treaty.

1. SIGNATURE

The Treaty on the Prohibition of Nuclear Weapons opened for signature on 20 September 2017 at a ceremony held in New York at the United Nations headquarters. It will remain open for signature indefinitely and thus can be signed by any State after this date at UN headquarters in New York (contact: Treaty Section, Office of Legal Affairs, United Nations).

By signing the Treaty, a State is signalling its intention to take the steps necessary to become a party to the Treaty. However, the signature also creates a legal obligation because, during the period between signature and consent to be bound, the signatory State must not take any action that would undermine the object and purpose of the Treaty (see Article 18, Vienna Convention on the Law of Treaties, 1969).

Signing the Treaty does not make the State a party to the agreement or require it to begin implementing its provisions. To become formally bound by the Treaty's requirements – and thus become a State Party – a signatory State must subsequently express its consent to be bound to the instrument by way of ratification, acceptance or approval. States that do not sign the instrument may also agree to become bound by the Treaty through the act of accession.

Under established international practice, only heads of State, heads of government or ministers for foreign affairs have the authority, by virtue of their functions, to sign multilateral treaties on behalf of the State. Other representatives may sign the Treaty if they are in possession of appropriate full powers granted by one of the above authorities. A model instrument of full powers for the Treaty on the Prohibition of Nuclear Weapons is contained in the Annex.

2. RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

To become party to the Treaty on the Prohibition of Nuclear Weapons, a State must formally declare its consent to be bound by the agreement. This will normally involve two steps: action by the national government in accordance with its constitutional processes and a notification to the depositary.

a. Action by the national government

At the national level, a State must agree to become a party to the Treaty in accordance with its relevant domestic procedures. This usually requires discussion within the government and action by its parliament and/or its executive.

b. Notification to the depositary

After the domestic procedures have been followed and the decision to be bound by the Treaty taken, a State will need to prepare an instrument of ratification, acceptance, approval or accession to express its consent to be bound to the Treaty on the international plane.

A State that has signed the Treaty will normally declare its consent to be bound by preparing an **instrument of ratification, acceptance or approval**.

A State that has not signed the Treaty will usually declare its consent to be bound by preparing an **instrument of accession**.

For constitutional reasons, certain States use the terms ‘**acceptance**’ or ‘**approval**’ to describe their consent to be bound to international treaties. These terms have the same legal effect as ratification and consequently express a State’s consent to be bound by international agreements.

To formally adhere to the Treaty on the Prohibition of Nuclear Weapons, an instrument of ratification, acceptance, approval or accession must be submitted to the Treaty’s depositary, in this case the UN secretary-general (contact: Treaty Section, Office of Legal Affairs, United Nations, New York). The filing of this instrument with the UN secretary-general is the action that effects the State’s consent to be bound by the Treaty and triggers the countdown for the Treaty’s entry into force. At that point, the Treaty’s requirements become legal commitments for the State and have international legal force. The entry into force of the Treaty for the State will also create Treaty relations, including rights and obligations, with respect to other States Parties.

The Treaty on the Prohibition of Nuclear Weapons enters into force 90 days after the 50th instrument of ratification, acceptance, approval or accession has been deposited with the UN secretary-general. The specific date on which it becomes binding on an individual State is determined as follows:

- i. For the first 50 States to deposit instruments with the UN secretary-general, the Treaty will enter into force 90 days after the 50th instrument of ratification, acceptance, approval or accession is received.
- ii. For all other States, the Treaty will enter into force 90 days after the date on which a State has deposited its instrument of ratification, acceptance, approval or accession with the UN secretary-general.

The Treaty does not allow for reservations.

3. NATIONAL IMPLEMENTATION

The Treaty (Article 5) requires each State Party to adopt the necessary measures to implement its obligations under the agreement. It also requires them to take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any prohibited activity committed by persons or on territory under its jurisdiction or control. Depending on a State’s domestic law or procedures, specific criminal legislation to impose legal sanctions may be needed.

In addition to the prevention and punishment of violations, States need to consider a number of positive measures to ensure implementation of the Treaty. These may include:

- a. the development and implementation of plans for the destruction of stockpiled nuclear weapons in accordance with Article 4, if a State owns, possess or controls such weapons
- b. the development and implementation of plans for the provision of assistance to people affected by the use or testing of nuclear weapons, including medical care, rehabilitation and psychological support and social and economic inclusion (Article 6)
- c. the development and implementation of plans to advance the remediation of the natural environment contaminated by the use or testing of nuclear weapons (Article 6)

- d. the creation and implementation of cooperation and assistance programmes for the actions identified in paragraphs b and c above in support of other States Parties (Article 7).

4. MODEL INSTRUMENTS OF FULL POWERS, RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

Model instruments to be filed with the depositary are attached.

The ICRC's delegations throughout the world and its Department of International Law and Policy in Geneva are available for guidance on preparing and implementing legislation and to provide any further information or clarification that may be required.

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MODEL INSTRUMENT OF FULL POWERS TO SIGN THE TREATY
ON THE PROHIBITION OF NUCLEAR WEAPONS

I, [name and title of head of State, head of government or minister for foreign affairs],

HEREBY AUTHORIZE [name and title] to sign the Treaty on the Prohibition of Nuclear Weapons,
done at New York on 7 July 2017, on behalf of the Government of [name of State].

Done at [place] on [date]

[Signature] + [seal]

*This instrument must be signed by the head of State, head of government or minister for foreign
affairs.*

For States Signatories:

MODEL INSTRUMENT OF [RATIFICATION][ACCEPTANCE][APPROVAL]
OF THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

WHEREAS the Treaty on the Prohibition of Nuclear Weapons was adopted at New York on 7 July
2017 and opened for signature on 20 September 2017,

WHEREAS the said Treaty has been signed on behalf of the Government of [name of State] on [date],

NOW THEREFORE I, [name and title of the head of State, head of government or minister for foreign
affairs], declare that the Government of [name of State], having considered the above-mentioned
Treaty, [ratifies][accepts][approves] the same Treaty and undertakes faithfully to perform and carry out
the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of [ratification][acceptance][approval] at [place]
on [date].

[signature] + [seal]

*This instrument must be signed by the head of State, head of government or minister for foreign
affairs.*

For States that have not signed the Treaty:

MODEL INSTRUMENT OF ACCESSION
TO THE
TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

WHEREAS the Treaty on the Prohibition of Nuclear Weapons was adopted at New York on 7 July 2017,

NOW THEREFORE I, [name and title of the head of State, head of government or minister for foreign affairs], declare that the Government of [name of State], having considered the above-mentioned Treaty, accedes to the same Treaty and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of accession at [place] on [date].

[signature] + [seal]

This instrument must be signed by the head of State, head of government or minister for foreign affairs.