

## IV. Treaty on the Prohibition of Nuclear Weapons

TYTTI ERÄSTÖ

The 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) is the first legally binding agreement to prohibit the development, deployment, possession, use and threat of use of nuclear weapons.<sup>1</sup>

Supporters view the TPNW as serving the ultimate goal of the complete elimination of nuclear weapons and as strengthening Article VI of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT).<sup>2</sup> The nuclear weapon states (NWS) and some of their allies, however, have criticized the TPNW for raising unrealistic expectations and view it as having the potential to undermine the NPT.<sup>3</sup>

Against this backdrop of controversy, several states remain undecided about whether to join. As of 31 December 2018, the TPNW had been signed by 69 states and ratified/acceded to by 19.<sup>4</sup> The treaty will enter into force 90 days after 50 states have either ratified or acceded to it. This section provides an overview of current developments around the TPNW and examines relevant international and domestic debates.

### **Continuing controversy over the TPNW**

At the Preparatory Committee (PrepCom) for the 2020 Review Conference of the Parties to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons in 2018, a majority of the non-nuclear weapon states welcomed the adoption of the TPNW. Supporters lauded the treaty as a ‘historic success’ and ‘the first tangible result of multilateral nuclear disarmament negotiations since the adoption of the Comprehensive Test Ban Treaty in 1996’.<sup>5</sup> Others—notably allies of the NWS with reservations about the TPNW—refrained from

<sup>1</sup> For a summary and other details of the TPNW see Annex A, section I, in this volume. See also Kile, S., ‘Treaty on the Prohibition of Nuclear Weapons’, *SIPRI Yearbook 2018*, pp. 307–18.

<sup>2</sup> In Article VI, the nuclear weapon states commit themselves ‘to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control’.

<sup>3</sup> Kile (note 1).

<sup>4</sup> The TPNW has been ratified by Austria, Costa Rica, Cuba, Gambia, Guyana, the Holy See, Mexico, New Zealand, Nicaragua, Palau, Palestine, Samoa, San Marino, Thailand, Uruguay, Vanuatu, Venezuela and Viet Nam. Cook Islands became party to the treaty through accession.

<sup>5</sup> See Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, ‘Statement by Thailand’, Geneva, 23 Apr. 2018; and Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, ‘Statement by Austria’, Geneva, 25 Apr. 2018.

commenting on the treaty and instead stressed the need for an ‘incremental’ or ‘progressive’ approach to disarmament.<sup>6</sup>

With the exception of China, the NWS openly criticized the TPNW. The UK stated that it does not regard its provisions as an emerging rule of customary international law.<sup>7</sup> France argued that the TPNW might challenge the NPT by creating alternative norms and increase the risk of conventional military escalation.<sup>8</sup> Russia maintained that the TPNW ‘is based on the false premise that nuclear disarmament can be carried out without taking into account strategic realities’, and that the treaty ‘threatens to undermine long-term efforts aimed at real nuclear disarmament’.<sup>9</sup>

The USA argued that: ‘If we continue to focus on numerical reductions and the immediate abolition of nuclear weapons, without addressing the real underlying security concerns . . . we will advance neither the cause of disarmament nor the cause of enhanced collective international security’.<sup>10</sup> The USA has also criticized the TPNW’s weak verification provisions and suggested that the treaty—by delegitimizing nuclear weapons—could undermine the credibility of extended deterrence and thus create greater proliferation pressure.<sup>11</sup>

In response to the arguments against the TPNW, its supporters highlighted the treaty’s complementarity with the NPT. Austria, for example, argued that the TPNW ‘strengthens the implementation of Article VI’ of the NPT and was necessary for its fulfilment.<sup>12</sup> The New Agenda Coalition rejected the view that the TPNW ‘could stand in the way of the fulfilment by any State Party of its NPT obligations and commitments’, arguing instead that it is ‘the lack of follow-through on implementation of Article VI and efforts to reinterpret it . . . that continue to be the main source of division within

<sup>6</sup> See e.g. Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, ‘Statement for General Debate on the Progressive Approach’, Geneva, 24 Apr. 2018. The statement is signed by Albania, Australia, Belgium, Bulgaria, Canada, Czechia, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Italy, Japan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Turkey.

<sup>7</sup> Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, ‘Statement by the United Kingdom’, Geneva, 24 Apr. 2018.

<sup>8</sup> Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, ‘Statement by France’, Geneva, 25 Apr. 2018.

<sup>9</sup> Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, ‘Statement by Russia’, Geneva, 26 Apr. 2018.

<sup>10</sup> Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, ‘Creating conditions for nuclear disarmament (CCND)’, Working Paper by the USA, NPT/CONF.2020/PC.II/WP.30, Geneva, 18 Apr. 2018.

<sup>11</sup> Ford, C., ‘The Treaty on the Prohibition of Nuclear Weapons: A well-intentioned mistake’, Remarks at the University of Iceland, Reykjavik, 30 Oct. 2018.

<sup>12</sup> Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, ‘Statement by Austria’, Geneva, 23 Apr. 2018.

the NPT'.<sup>13</sup> Ireland stated that the TPNW was 'a clear signal to the nuclear-weapon States that we are no longer willing to accept that it is they who set the pace and agenda for nuclear disarmament'.<sup>14</sup>

From the point of view of TPNW supporters, the risks of continued reliance on nuclear deterrence outweigh the risks of moving away from it. According to Austria, that 'a nuclear strike is a fundamentally irrational act' is 'obvious for a first strike', but a second strike is no more rational as 'it would not undo the destruction already suffered in the first strike' and 'might even provoke additional nuclear strikes'.<sup>15</sup>

### **National debates and civil society contributions**

Since opening for signature, the TPNW has become a matter of domestic political debate in many countries, and civil society has also become involved in the discussions. While most national debates on the TPNW are conducted behind closed doors, some countries have opted for a more transparent process.

In August, the Swiss Government decided that it would not sign the TPNW following the conclusions of a report by an interdepartmental working group. The report argued that although 'humanitarian, international law and peace policy considerations' favoured accession, the TPNW 'entails risks in terms of both the further advancement of disarmament diplomacy and Switzerland's security policy interests'.<sup>16</sup> The report also suggested that the delegitimization of nuclear weapons would disproportionately affect Western liberal democracies over other NWS.<sup>17</sup>

<sup>13</sup> Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, 'Statement by Dell Higgie of New Zealand on behalf of the New Agenda Coalition', Geneva, 23 Apr. 2018. The New Agenda Coalition works within the NPT framework as a ministerial-level group of states 'focused on building international consensus to make progress on nuclear disarmament'. Its membership comprises Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa. See 'New Agenda Coalition', Nuclear Threat Initiative, 31 May 2018.

<sup>14</sup> Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, 'Statement by Ireland', Geneva, 26 Apr. 2018.

<sup>15</sup> Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, 'Nuclear weapons and security: A humanitarian perspective', Working paper by Austria, NPT/CONF.2020/PC.II/WP.10, Geneva, 12 Mar. 2018.

<sup>16</sup> E.g. the report stated that the treaty's 'stigmatization agenda' is not in line with the Swiss approach of promoting disarmament 'with and not against nuclear weapon states' and that joining could also have negative implications for Swiss cooperation with NATO under the Partnership for Peace programme. Government of Switzerland, Swiss Federal Department of Foreign Affairs (FDFA), 'Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons', 20 June 2018 (English translation from the German original).

<sup>17</sup> Government of Switzerland (note 16).

Sweden also commissioned a report to analyse the treaty and the possible consequences of Swedish accession.<sup>18</sup> The report had not been published as of the end of 2018. Swedish civil society organizations issued a ‘shadow’ report that argued that TPNW accession would not undermine Sweden’s security arrangements, and that the treaty would allow nuclear-related trade except when conducted in the knowledge that such trade would serve military purposes.<sup>19</sup>

Debate on the TPNW also took place in countries that did not participate in the treaty negotiations, including North Atlantic Treaty Organization (NATO) member states. Following a parliamentary request, in October the Norwegian Government issued a report assessing the implications of Norwegian accession to the TPNW. The report found that ‘Norway cannot join the Treaty without compromising its obligations as a NATO member’.<sup>20</sup> In contrast, a report by Norwegian civil society argued that NATO membership posed no legal obstacle to the country’s accession to the TPNW, although it would probably be interpreted by some members as a breach of NATO solidarity, potentially leading to punitive measures. Nonetheless—while acknowledging that the short-term impact on disarmament might be marginal—the report favoured accession, stating ‘in the long run support for the goal of disarmament from states such as Norway could be critical’.<sup>21</sup>

In September 2018, the Spanish political party Podemos reportedly obtained a commitment from the Spanish Government that it would sign the TPNW in exchange for Podemos support for the 2019 budget. However, Spain has not announced plans to implement this decision.<sup>22</sup> In Australia, the Labor Party has made a commitment to sign and ratify the TPNW when in government.<sup>23</sup> The UK is the only nuclear-armed state where joining the TPNW has been discussed as a possibility by the main opposition party.<sup>24</sup>

<sup>18</sup> Government of Sweden, ‘Inquiry into the consequences of a possible Swedish accession to the Treaty on the Prohibition of Nuclear Weapons’, Press release, 23 Oct. 2017. Initially due in Oct. 2018, publication of the report was postponed until Jan. 2019.

<sup>19</sup> International Physicians for the Prevention of Nuclear War (IPPNW) Sweden and Women’s International League for Peace and Freedom (WILPF) Sweden, ‘Skuggan Av Makten: Skuggredning Till Utredning av konsekvenserna av ett svenskt tillträde till kärnvapenförbudskonventionen’ [In the Shadow of Power: Shadow investigation of the impact of Sweden joining the Nuclear Weapons Convention], Sep. 2018 (in Swedish).

<sup>20</sup> Norwegian Ministry of Foreign Affairs, ‘Review of the consequences for Norway of ratifying the Treaty on the Prohibition of Nuclear Weapons’, 28 Nov. 2018 [published in Norwegian on 8 Oct. 2018].

<sup>21</sup> Nystuen, G., Egeland, K. and Hugo, T. G., *The TPNW and its Implications for Norway* (Norwegian Academy of International Law: Oslo, Sep. 2018).

<sup>22</sup> ‘Could Spain be the first NATO state to sign the Nuclear Ban Treaty?’, International Campaign to Abolish Nuclear Weapons (ICAN), 6 Dec. 2018.

<sup>23</sup> ‘Australian Labor Party commits to joining Nuclear Ban Treaty’, International Campaign to Abolish Nuclear Weapons (ICAN), 18 Dec. 2018.

<sup>24</sup> Merrill, J., ‘Trident: Labour would sign UN treaty banning nuclear weapons’, *Inews*, 27 Oct. 2017.