

III. The first meeting of states parties to the Treaty on the Prohibition of Nuclear Weapons

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The 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) is the first multilateral treaty to comprehensively ban nuclear weapons, including their development, deployment, possession, use and threat of use.¹ Having entered into force on 22 January 2021, the treaty required the United Nations secretary-general to convene a meeting of states parties (MSP) within one year.² The first MSP (1MSP) was thus initially to take place in January 2022, but it was twice postponed beyond the one-year deadline due to the Covid-19 pandemic and to avoid overlap with other major meetings.³ The meeting was eventually held on 21–23 June 2022 in Vienna.

Reflective of careful preparations and unity among TPNW states parties, 1MSP took decisions on several issues and unanimously adopted two outcome documents—a political declaration and an action plan. After a brief discussion of the lead-up to the meeting, this section reviews those two documents and other decisions of the meeting before surveying the positions on the TPNW of non-nuclear-armed states that are part of extended nuclear deterrence arrangements with the United States, sometimes called the nuclear ‘umbrella’.

The lead-up to the meeting

The president-designate of the meeting was Alexander Kmentt of Austria, which had played a key role in the process leading up to the treaty negotiations in 2017. Indeed, Austria initiated the so-called ‘humanitarian pledge’ that paved the way for TPNW negotiations at the 2014 Conference on the Humanitarian Impact of Nuclear Weapons (HINW) in Vienna.⁴ The three HINW conferences in 2013–14 built on the final consensus document of

¹ For a summary and other details of the TPNW, including lists of the parties and signatories, see annex A, section I, in this volume.

² Treaty on the Prohibition of Nuclear Weapons (note 1), Article 8. On the negotiation and entry into force see Kile, S. N., ‘Treaty on the Prohibition of Nuclear Weapons’, *SIPRI Yearbook 2018*, pp. 307–11; Erästö, T., ‘Treaty on the Prohibition of Nuclear Weapons’, *SIPRI Yearbook 2019*, 387–90; Erästö, T., Kile, S. N. and Fedchenko, V., ‘Multilateral arms control, disarmament and non-proliferation treaties and initiatives’, *SIPRI Yearbook 2021*, 434–43; and Erästö, T. and Fedchenko, V., ‘Multilateral nuclear arms control, disarmament and non-proliferation treaties and initiatives’, *SIPRI Yearbook 2022*, pp. 460–69.

³ Kmentt, A., President-designate of TPNW 1MSP, Letter to the UN secretary-general, 10 Aug. 2021, annexed to A/75/990, 16 Aug. 2021; and United Nations, Secretary-General, Note verbale, 4 Apr. 2022. See also Erästö and Fedchenko (note 2), p. 462.

⁴ Vienna Conference on the Humanitarian Impact of Nuclear Weapons, ‘Humanitarian pledge’, 8–9 Dec. 2014. See also e.g. Kile (note 2).

the 2010 review conference of the Non-Proliferation Treaty (NPT), which expressed ‘deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons’.⁵ These conferences laid the foundations for the TPNW.

Austria convened a fourth HINW conference on 20 June, prior to 1MSP. This meeting included both civil society and state representatives, with a spotlight on the scientific community and survivors of nuclear weapon use and testing. While separate from 1MSP, the 2022 HINW conference provided input to the former by recalling key findings from the previous humanitarian conferences and presenting relevant new research and survivor testimonials.⁶ The voices of the survivors and civil society organizations were also prominent at 1MSP, alongside several statements by countries affected by nuclear weapon testing.

By the end of 1MSP, the TPNW had been ratified by 65 states, 49 of which attended the meeting. In addition, the participants included 34 observer states, various international and non-governmental organizations, and representatives of civil society, including survivors of nuclear weapon use and testing.⁷ As well as states that had signed but not yet ratified the treaty, the observers included non-signatory states, among them five states with extended nuclear deterrence arrangements with the United States.

Decisions taken at the first meeting of states parties

The treaty mandated 1MSP to set time limits related to how nuclear-armed states and states hosting nuclear weapons on their territory may join the TPNW. Article 4 states that ‘each State Party that owns, possesses or controls nuclear weapons or other nuclear explosive devices shall immediately remove them from operational status, and destroy them as soon as possible but not later than a deadline to be determined by the first meeting of States Parties’.⁸

The MSP set the deadline for nuclear weapon destruction at 10 years for nuclear-armed states that join the treaty before having eliminated their nuclear arsenals. In case of ‘unexpected difficulties in the disarmament process’, this deadline can be extended by up to five years.⁹ For states that host

⁵ 2010 NPT review conference, Final document, vol. I, NPT/CONF.2010/50 (Vol. I), part I, para. A(v). For a summary and other details of the 1968 Treaty of the Non-Proliferation of Nuclear Weapons (NPT) see annex A, section I, in this volume.

⁶ Austrian Federal Ministry for European and International Affairs (FMEIA), *The 2022 Vienna Conference on the Humanitarian Impact of Nuclear Weapons* (FMEIA: Vienna, 2022).

⁷ First meeting of TPNW states parties, Report, TPNW/MSP/2022/6, 21 July 2022, paras 17–21.

⁸ Treaty on the Prohibition of Nuclear Weapons (note 1), Article 4(2). The other option, provided under Article 4(1), is for a nuclear-armed state to join the treaty after the elimination of its nuclear programme.

⁹ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex III, Decision 1.

the nuclear weapons of other states, the time limit for their removal was set at 90 days.¹⁰ These decisions apparently drew on recommendations in studies published by researchers from Princeton University's Program on Science and Global Security prior to 1MSP.¹¹

Although Article 4 also mandates states parties to designate a competent international authority or authorities to negotiate and verify disarmament, such designation is not required until a nuclear-armed state joins the TPNW. The states parties thus took no decision on this issue. Instead, they included relevant preparatory work as part of the action plan (see below).

In a second important set of decisions, the states parties structured intersessional work between the biennial MSPs or the sexennial review conferences in two ways. First, they appointed Ireland and Thailand as informal facilitators 'to further explore and articulate the possible areas of tangible cooperation' between the TPNW and the NPT.¹² Second, they established informal working groups related to the elimination of nuclear weapons (Article 4); victim assistance and environmental remediation (Article 6) and international cooperation and assistance (Article 7); and universalization of the treaty (Article 12).¹³ During the intersessional period between 1MSP and 2MSP, Mexico and New Zealand were chosen to co-chair the group on Article 4; Kazakhstan and Kiribati to co-chair the group on articles 6 and 7, and Malaysia and South Africa to co-chair the group on Article 12. In addition, Chile was appointed as the gender focal point 'to support the implementation of the gender provisions of the Treaty and report on progress made to the second Meeting of States Parties'.¹⁴

1MSP also decided to establish a Scientific Advisory Group (SAG) to provide scientific and technical advice for treaty implementation.¹⁵

The Vienna Action Plan

The action plan adopted by 1MSP—known as the Vienna Action Plan—lists concrete steps to facilitate treaty implementation that states parties commit to take during and beyond the intersessional period between 1MSP and

¹⁰ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7).

¹¹ Kütt, M. and Mian, Z., 'Setting the deadline for nuclear weapon destruction under the Treaty on the Prohibition of Nuclear Weapons', *Journal for Peace and Nuclear Disarmament*, vol. 2, no. 2 (2019); and Kütt, M. and Mian, Z., 'Setting the deadline for nuclear weapon removal from host states under the Treaty on the Prohibition of Nuclear Weapons', *Journal for Peace and Nuclear Disarmament*, vol. 5, no. 1 (2022).

¹² First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex III, Decision 3.

¹³ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex III, Decision 4.

¹⁴ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex III, Decision 4.

¹⁵ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex III, Decision 2.

2MSP.¹⁶ Like the three informal working groups, most of the 50 action points deal with TPNW articles 4, 6, 7 and 12.

As noted above, the action points relevant to Article 4 focus on preparatory work related to the designation of the competent international authority or authorities. More specifically, the Vienna Action Plan commits the states parties to undertake ‘further reflection and work on developing such a mechanism’, including discussions related to ‘the general obligations of States Parties to the specific mandate of the international authority or authorities, and providing guidance for the designation of authorities’.¹⁷ In addition, the states parties agreed to elaborate on the specific requirements for requests to extend the above mentioned disarmament deadlines, with input from the SAG and relevant technical agencies.¹⁸

The action points related to articles 6 and 7 (on victim assistance, environmental remediation, and international cooperation and assistance) include engagement with communities affected by nuclear weapon use or testing; information exchange with non-states parties that have used or tested nuclear weapons ‘on their provision of assistance to affected states parties’; development of mechanisms to facilitate assistance to such states parties; and discussing ‘the feasibility of . . . establishing an international trust fund for states that have been affected by the use or testing of nuclear weapons’.¹⁹ Consideration of such a trust fund was also recommended by a working paper submitted to 1MSP by Kiribati and Kazakhstan.²⁰ Moreover, the Vienna Action Plan specifically tasks the affected states parties to assess the effects of nuclear weapon use or testing; to ‘develop national plans for implementation of their victim assistance and environmental remediation obligations’; and to share these assessments and plans with 2MSP.²¹ At the same time, others ‘in a position to do so’ commit themselves ‘to assist those [affected] States parties with clearly demonstrated needs for external support, by contributing to the mobilization of resources and the provision of technical, material and financial assistance’.²²

Related to Article 12, on universalization, the Vienna Action Plan commits the states parties, among other things, to urge more countries to sign and ratify the TPNW through ‘ministerial or diplomatic démarches or outreach visits’; to engage in capacity building to ‘clarify the steps that a prospective State party would have to undertake to implement the Treaty’; and to engage

¹⁶ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex II.

¹⁷ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex II, para. 8 and action 15.

¹⁸ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), action 17.

¹⁹ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), actions 19, 20, 23, 29.

²⁰ First meeting of TPNW states parties, ‘Implementing articles 6 and 7’, Working paper submitted by Kazakhstan and Kiribati, TPNW/MSP/2022/WP.5, 8 June 2022.

²¹ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), actions 30, 31.

²² First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), action 32.

‘with those States that for the moment remain committed to nuclear weapons and nuclear deterrence’.²³

The declaration

The declaration of 1MSP—titled ‘Our commitment to a world free of nuclear weapons’—reflects the geopolitical context marked by Russia’s nuclear threats in connection with its war on Ukraine.²⁴ As stated in the declaration, ‘we are alarmed and dismayed by threats to use nuclear weapons and increasingly strident nuclear rhetoric’.²⁵ Some national statements at 1MSP strongly condemned Russian nuclear threats and there was reportedly a debate behind the scenes on whether Russia should be singled out in the joint declaration.²⁶ However, the final declaration reflects the majority view that Russia’s nuclear threats were merely one expression of the systemic problems of the international nuclear order. Thus, instead of focusing on or naming Russia, the declaration condemns ‘all nuclear threats, whether they be explicit or implicit and irrespective of the circumstances’, noting that

[the use of nuclear weapons] as instruments of policy . . . highlights now more than ever the fallacy of nuclear deterrence doctrines, which are based and rely on the threat of the actual use of nuclear weapons and, hence, the risks of the destruction of countless lives, of societies, and of nations, and of inflicting global catastrophic consequences.²⁷

The declaration goes on to express grave concern about the continued possession of nuclear weapons by all nine nuclear-armed states and notes that growing instability and conflict ‘greatly exacerbate the risks that these weapons will be used’.²⁸ This contrasts starkly with, in particular, the efforts of the Western nuclear-armed states later in the year at the NPT review conference to distinguish themselves from Russia by highlighting their role as ‘responsible custodians of nuclear weapons’ (see section II).²⁹

The declaration then argues that the TPNW is ‘needed more than ever’, and that states parties ‘will move forward with its implementation, with the

²³ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), actions 3, 5, 15.

²⁴ On Russia’s invasion of Ukraine see chapter 1, section V, chapter 2, section I, and chapter 12, section III, in this volume.

²⁵ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex I, para. 4.

²⁶ Davis Gibbons, R. and Herzog, S., ‘The First TPNW meeting and the future of the nuclear ban treaty’, *Arms Control Today*, vol. 52, no. 7 (Sep. 2022).

²⁷ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex I, para. 5.

²⁸ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex I, para. 6.

²⁹ 2020 NPT review conference, ‘Principles and responsible practices for nuclear weapon states’, Working paper submitted by France, the United Kingdom and the United States, NPT/CONF.2020/WP.70, 29 July 2022, para. 1.

aim of further stigmatizing and delegitimizing nuclear weapons and steadily building a robust global peremptory norm against them'.³⁰

The positions of 'umbrella' states on the TPNW

Germany and Norway—two countries that are part of extended nuclear deterrence arrangements with the United States—had already expressed their intention to observe IMSP in 2021.³¹ To the surprise of many, three additional states with such arrangements—Australia, Belgium and the Netherlands—also announced their respective decisions to observe IMSP shortly before the meeting.³² The decisions of these five 'umbrella' states to observe IMSP reflected domestic support for the TPNW. Their attendance was particularly noteworthy given the policy line of opposing the TPNW followed by the USA and the North Atlantic Treaty Organization (NATO), a position that is shared by most nuclear-armed states.³³

In the case of Australia, this domestic support included the commitment in 2018 by the opposition Labor party to a policy of seeking TPNW membership when in government.³⁴ This policy was initiated by Anthony Albanese, who became prime minister in May 2022.³⁵ Following the change in government, Australia decided in October 2022 to abstain from voting, rather than voting against the annual UN General Assembly resolution on the TPNW.³⁶ This shift prompted the USA to issue a warning to its ally, arguing that the treaty 'would not allow for US extended deterrence relationships'.³⁷

In contrast, Finland and Sweden—which submitted applications to join NATO in May 2022 following the renewed Russian invasion of Ukraine—voted against the UN General Assembly resolution on the TPNW for the first

³⁰ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), annex I, para. 8.

³¹ Erästö and Fedchenko (note 2), pp. 463–64.

³² See e.g. International Campaign to Abolish Nuclear Weapons (ICAN), 'Following parliament's vote, Netherlands will attend TPNW MSP', 18 June 2022.

³³ See e.g. North Atlantic Treaty Organization, North Atlantic Council, Statement as the Treaty on the Prohibition of Nuclear Weapons enters into force, 15 Dec. 2020; Five permanent members of the UN Security Council, Joint statement on the Treaty on the Non-Proliferation of Nuclear Weapons, 24 Oct. 2018; and United Nations, General Assembly, 'General and complete disarmament', Report of the First Committee, A/77/385, 14 Nov. 2022, para. 28. For a brief description of NATO and a list of its members (which include Belgium, Germany, the Netherlands and Norway) see annex B, section II, in this volume.

³⁴ International Campaign to Abolish Nuclear Weapons (ICAN) Australia, 'Australian Labor Party commits to joining nuclear ban treaty', 18 Dec. 2018. See also Australian Labor Party (ALP), *ALP National Platform* (ALP: Revesby, Mar. 2021), pp. 116–17.

³⁵ Albanese, A., Speech to the 48th National Conference of the Australian Labor Party, 18 Dec. 2018; and Wright, T., 'Prime Minister Albanese is a TPNW champion', International Campaign to Abolish Nuclear Weapons (ICAN) Australia, May 2021.

³⁶ United Nations, A/77/385 (note 33), para. 28; and UN General Assembly Resolution 77/54, 'Treaty on the Prohibition of Nuclear Weapons', adopted 7 Dec. 2022.

³⁷ Hurst, D., 'US warns Australia against joining treaty banning nuclear weapons', *The Guardian*, 8 Nov. 2022.

time, having previously abstained.³⁸ Thus, positions on the TPNW of existing and prospective US allies can be seen as an indication of domestic political shifts on the question as to whether, in the pursuit of national security, nuclear deterrence or nuclear disarmament should be prioritized.

Outlook

As noted by two observers, ‘The success of the first meeting of the TPNW states-parties is difficult to deny in terms of organization and policy’, even though the challenges for the treaty’s core objective—nuclear disarmament—remain formidable.³⁹

The main purpose of the TPNW—to strengthen the global norm against nuclear weapons and thus to generate political pressure for nuclear disarmament—might be reached even if nuclear-armed states do not join the treaty. Yet, much focus at 1MSP was directed at universalization and the provisions dealing with potential accession by a nuclear-armed state or a state hosting nuclear weapons. This work is necessary to prepare for the eventuality that a state armed with or hosting nuclear weapons will in the future decide to join the treaty. At the same time, such work and other efforts—notably those related to ensuring complementarity with the NPT—serve to counter some of the main arguments against the TPNW, which has been criticized for potentially undermining the NPT and for lacking clear verification provisions.⁴⁰

However, perhaps the most significant short- and medium-term impact of the TPNW-implementation process launched by 1MSP will turn out to be the work to give a definite form to the treaty’s provisions related to victim assistance and environmental remediation. By giving greater prominence to these issues and by mobilizing international action to address them, the TPNW is adding a new dimension to the global nuclear disarmament and non-proliferation regime. With the exception of nuclear weapon-free zone treaties—many of which include provisions banning the dumping of radioactive waste and, in the case of the Central Asian zone, a provision on the environmental rehabilitation of contaminated areas—these issues have not previously been addressed by any international legal framework.⁴¹ The importance of articles 6 and 7 of the TPNW were also recognized by observers at 1MSP. For example, Switzerland said that turning the relevant

³⁸ United Nations, A/77/385 (note 33), para. 28; and UN General Assembly Resolution 77/54 (note 36). On the NATO applications of Finland and Sweden see chapter 1, section V, in this volume.

³⁹ Davis Gibbons and Herzog (note 26).

⁴⁰ E.g. First meeting of TPNW states parties, Statement by Sweden, 22 June 2022.

⁴¹ On the 2006 Treaty of Semipalatinsk and the other nuclear weapon-free zone treaties see annex A, section II, in this volume. See also UN Office for Disarmament Affairs, ‘Nuclear-weapon-free zones’, and Lovøld, M., ‘Why does the Nuclear Ban Treaty matter?’, International Committee of the Red Cross, 19 Jan. 2021.

obligations into action ‘will need support by the widest possible group of states’, suggesting that this should be a joint effort also involving states that are not party to the TPNW, as ‘the humanitarian consequences should unite us all’.⁴²

By the end of 2022, the number of TPNW states parties had risen to 68, in addition to which 26 states had signed but not yet ratified the treaty. The second MSP is scheduled for 27 November–1 December 2023 in New York.⁴³ As suggested by the Action Plan, 2MSP and the preparatory work preceding it can be expected to take forward the operationalization of the TPNW’s key provisions, further establishing the treaty and increasing its impact within, and possibly also beyond, states parties.

⁴² First meeting of TPNW states parties, ‘Victim assistance and environmental remediation’, Statement by Switzerland, 22 June 2022.

⁴³ First meeting of TPNW states parties, TPNW/MSP/2022/6 (note 7), paras 11, 23.