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The Legality of the use of Nuclear weapons in light of the Treaty on the Prohibition of Nuclear weapons (TPNW) or Nuke Ban Treaty, 2021

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The only weapons that can end life as we know it on this planet are nuclear weapons, which are the most callous and brutal weapons ever devised. The 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) is a notable global accomplishment, despite objections from some of the States with nuclear power and their supporters since it aims to spur an evolution away from nuclear weapons, which they depend on for security. As a result of the TPNW's international entry into force, its participants must now make many practical choices and answer other inquiries about how to pursue it and create a long-lasting multinational system that will advance its overarching objectives. The TPNW is the first internationally enforceable agreement that forbids the Party-states from operating, threatening to operate, creating, building, constructing, obtaining, keeping, stockpiling, moving, locating, or lodging these weapons, as well as cooperating in any prohibited activities. This article explains the consequence of nuclear weapons on mortal life and the atmosphere while also discussing the new treaty, TPNW. The article lastly discusses the necessity of outlawing the usage of nuclear weapons.

Keywords: *tpnw, disarmament, nuclear weapon, victim assistance, environment, nuclear test, proliferation.*

INTRODUCTION

Nuclear weapons are apparatuses that are planned to discharge energy explosively through nuclear fission or fusion, or a blend of both techniques. Fission weapons are atomic bombs. Fusion weapons are categorised as nuclear weapons since at least some of the energy is released through nuclear fusion. They are also referred to as hydrogen bombs or thermonuclear bombs, which are more common.¹ The world's most devastating weapons are nuclear weapons. Nuclear explosions cause devastating long-term and immediate repercussions. Years after a nuclear weapon assault, the environment and people in the region can suffer damage as a result of the weapon's fallout. Nuclear weapons either fission or fusion processes release massive amounts of energy.²

World War II saw the invention of nuclear weapons mechanics. Atomic bombs have only ever been used in combat twice in history, with Nagasaki and Hiroshima being the two locations where the US used them against Japan at the end of World War II. Nuclear proliferation followed the fight, and during the Cold War, the US and the USSR fought for supremacy in a race for nuclear dominance. State-level criticism of nuclear weapons increased globally in the 1960s. A draft of non-proliferation treaties was presented to the General Assembly by the USA and the Soviet Union in the fall of 1965. These treaties were intended to prevent the growth of nuclear weapons rather than to engage in a disarmament process. The Nuclear Non-Proliferation Treaty (NPT), a UN agreement that sought to stop the development of nuclear weapons and clear the path for ultimate disarmament, was established in 1968 as a result of widespread concern on a global scale over the exponentially extending amount of nuclear weapons.³

¹ Thomas B. Cochran, 'Nuclear weapon' (*Britannica*) <<https://www.britannica.com/technology/nuclear-weapon>> accessed 20 November 2022

² 'Nuclear Disarmament: History and Background' (*NGO Committee on Disarmament, Peace and Security WordPress*) <<https://ngocdps.wordpress.com/research-the-issues/weapons-of-mass-destruction/nuclear-weapons/nuclear-disarmament-history-and-background/>> accessed 20 November 2022

³ 'International agreements relating to nuclear weapons' (*Campaign for Nuclear Disarmament*) <<https://cnduk.org/resources/international-agreements-relating-nuclear-weapons/>> accessed 20 November 2022

The Partial Test Ban Treaty (PTBT) commenced in October 1963 amid rising worries about the effects radioactive fallout from intensive testing programs of nuclear weapons during the 1950s might have on the surroundings and human fitness. Underwater, the atmosphere, and outer space are all prohibited by the PTBT. Since underground nuclear weapon testing is still permitted, the nuclear weapon states used this method to continue developing and enhancing their warheads. However, each test also produced so much radioactive gas and dust that could escape into the atmosphere, as well as extremely radioactive underground caves, which nevertheless resulted in environmental harm and contamination.⁴

To stop the proliferation of nuclear weapons and thwart nuclear arms rivalry, the nations of the world joined with each other to negotiate the Comprehensive Test Ban Treaty (CTBT) from 1994 to 1996. This treaty forbids any nuclear test explosions. At the NPT review meeting in 1995, the parties decided to extend the NPT indefinitely and to wrap up CTBT negotiations by no later than 1996.⁵ The General Assembly held a UN meeting later in 2017 to discuss preparing a binding treaty that would outlaw nuclear weapons and pave the way for their complete abolition. In addition to the involvement and contribution of representatives from global organisations and civil society, the Assembly encouraged all Member States to take part in the discussion.⁶

The Conference was held in New York from 27 March to 31 March and 15 June to 7 July respectively. On 7 July 2017, the Conference at the UN endorsed the Treaty on the Prohibition of Nuclear Weapons, with 122 States voting in favour, one voting against, and one abstaining. On 20 September 2017, the Secretary-General of the UN made the treaty available for signature. On January 22, 2021, it became operative.⁷ This article discusses the background of nuclear weapons proliferation and nuclear disarmament along with the new treaty The Treaty on the

⁴ *Ibid*

⁵ Daryl Kimball, 'Nuclear Testing and Comprehensive Test Ban Treaty (CTBT) Timeline' (*Arms Control Association*) <<https://www.armscontrol.org/factsheets/NuclearTestingTimeline>> accessed 20 November 2022

⁶ 'Treaty on the prohibition of nuclear weapons' (*United Nations Office for Disarmament Affairs*) <<https://www.un.org/disarmament/wmd/nuclear/tpnw/>> accessed 20 November 2022

⁷ *Ibid*

Prohibition of Nuclear Weapons, or the Nuke ban treaty, 2021, and also discusses the importance of nuclear disarmament.

HISTORY & DEVELOPMENT OF NUCLEAR PROLIFERATION ALONG WITH THE APPROACHES FOR NUCLEAR DISARMAMENT

In the late 1930s, technological developments made nuclear weapons possible for the first time in mankind's history. In 1942 the USA and its supporters started the Manhattan Project, during World War II, a covert research project to develop nuclear weapons, out of concern that their adversaries may develop nuclear weapons first. The invention and application of nuclear weapons marked the beginning of the nuclear age. The threat of nuclear conflict increased, as tensions between the powerful nuclear States, the Soviet Union and the US, grew throughout the Cold War.⁸ The International Atomic Energy Agency (IAEA) was later established on 29 July 1957, to encourage and regulate the undisturbed application of nuclear mechanisms.⁹

On October 15, 1962, a military jet of the US discovered Soviet nuclear weapons were being developed in Cuba, just a few hundred miles off the coast of Florida. Cuba was encircled by the US Navy, which demanded that the missiles be destroyed. After several stressful days, the leader of the Soviets agreed to have the missiles removed in return for an official assurance from the US that Cuba will not be attacked. The US arranged secretly for the removal of some missiles from Turkey, positioning them out of sight of the Soviet Union.¹⁰

During the late 1960s and the early 1970s, there were both successes and failures in the global fight against nuclear proliferation. The two nuclear powers with the greatest arsenals, the Soviet Union and the US began the operation of lowering their stocks. However, India did obtain nuclear weapons. On 14 February 1967, when the Tlatelolco Treaty opened for signing, Latin America was specified as the first nuclear-weapon-free zone (NWFZ). NWFZ is a territory where nations commit to "restrict and forbid" the "testing, use, construction, manufacture, or

⁸ 'The History of Nuclear Proliferation' (*World101*) <<https://world101.cfr.org/global-era-issues/nuclear-proliferation/history-nuclear-proliferation>> accessed 20 November 2022

⁹ *Ibid*

¹⁰ *Ibid*

purchase by any manner whatsoever" of any nuclear weapons. Subsequent agreements added the outer space area and the ocean bottom to the list of new NWFZs.¹¹

Following the UN General Assembly's endorsement of the Non-Proliferation Treaty draught text in the month of June of 1968, nations started signing the agreement. Nations not possessing nuclear weapons committed to never developing them under this historic global pact, but they were still permitted to operate atomic energy for peaceful intentions. The five signatories China, the United Kingdom, France, the US, and the Soviet Union all swore to surrender their nuclear weapons, but none did so yet.¹² The first deal between the Soviet Union and the US to restrict their nuclear arsenals during the Cold War was the interim Strategic Arms Limitations Talks agreement (SALT I), which was signed by both nations on 26 May 1972. Seven years after SALT I, SALT II was ratified.¹³

In May 1974, two years later, India conducted its first-ever nuclear test, known as Smiling Buddha. This marked the first nuclear bomb test carried out by a country other than the initial five nuclear powers recognised by the NPT. The first nuclear weapon test by Pakistan, a neighbour, and adversary, took place in 1998. Significant progress was achieved to strengthen the NPT, convince former Soviet governments to ratify the treaty, and ending the use of nuclear weapons after the Soviet Union disintegrated and the Cold War ended in 1991. After the fall of the Soviet Union, Belarus, Kazakhstan, and Ukraine were the three former Soviet Union states that still retained nuclear weapons. A global agreement between the 3 former territories and Russia mandated that all nuclear weapons in the 3 former territories be eliminated or handed to Russia for disposal. The only countries to give up their nuclear arsenals are the 3 former Soviet republics and South Africa. Additionally, they agreed to sign up for the NPT as "non-nuclear-weapon" states.¹⁴

A two-year negotiation process produced the Comprehensive Nuclear Test Ban Treaty (CTBT), which was released publicly for signing at the UN. The deal outlawed all nuclear operations,

¹¹ *Ibid*

¹² *Ibid*

¹³ *Ibid*

¹⁴ *Ibid*

including those conducted to test new weapons. However, the CTBT is not yet regarded as legally binding because not all of the required states, including China, Pakistan, the US, and India, have signed or accepted it in their own countries.¹⁵ North Korea on 10 January 2003 announced its exit from the NPT, saying: "We can no longer stay tied to the NPT, allowing the country's security and the dignity of our nation to be infringed upon." Nearly 4 years later, the North Korean government declared that it had effectively conducted a nuclear test, marking it the eighth country in history to do so.¹⁶

The Joint Comprehensive Plan of Action (JCPOA), achieved in 2015 following years of discussions, was agreed upon by the US, Russia, Germany, China, France, the UK, and the EU. Following Iran's agreement to restrict its nuclear project and surrender its nuclear assets to much stricter oversight than the minimal safeguards required by the IAEA, the US and other countries slacked economic sanctions against Iran. However, Donald Trump, the president of the US, said in 2018 that his country would abandon the accord and reinstate sanctions on Iran.¹⁷ On 17 July 2017, the Treaty banning nuclear weapons was ratified by the UN which is the first legally enforceable accord towards nuclear disarmament.

THE LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS, ADVISORY OPINION

The International Court of Justice (ICJ) concluded in 1996 that using or threatening of using nuclear weapons would be against international law principles that are implemented in armed conflict, specifically International Humanitarian Law (IHL) principles and regulations. It didn't, however, address the issue of whether deploying or threatening to operate nuclear weapons in a dire situation of self-protection where a Nation's very existence is in jeopardy would be legal. Consequently, the Court did not interpret IHL to put a categorical ban on the usage of nuclear weapons. Nuclear weapons are governed by many multilateral accords as well as according to the tenets and regulations of IHL. None of these, however, lays out a comprehensive list of

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ *Ibid*

restrictions that are applicable on a global scale.¹⁸ Before 2017, there was no treaty that all States could sign that would ban nuclear weapons on a worldwide scale. This gap was closed with the TPNW adoption.

THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS OR NUKE BAN TREATY, 2021 (TPNW)

The TPNW or the Treaty on the Prohibition of Nuclear Weapons is the first multinational treaty with global relevancy to entirely ban nuclear weapons. Also, it is the first to comprise clauses to help in managing the damaging humanitarian consequences of nuclear weapon testing and use.¹⁹ A group of nations without nuclear weapons formed the Humanitarian Initiative to promote nuclear disarmament by stressing the terrible humanitarian consequences of nuclear war. This initiative gave rise to the TPNW or the Treaty on the Prohibition of Nuclear Weapons.²⁰

The Treaty completes already-surviving international treaties, including the CTBT, the NPT, and agreements establishing NWFZ. On 7 July 2017, a diplomatic meeting of the UN endorsed the TPNW following two rounds of deliberations at the UNGA or United Nations General Assembly. The majority of NATO nations, all nuclear weapon states, and numerous nuclear weapon states' military partners boycotted both rounds. And on September 20, 2017, it was made open for signature.²¹ On 22 January 2021, it went into effect. This was hailed by treaty proponents as a crucial effort toward the abolition of nuclear spears. However, the TPNW's opponents argued that it could undermine the NPT and potentially further entrench existing international disarmament and non-proliferation divisions, which could obstruct future advancement.²²

¹⁸ '2017 Treaty On The Prohibition Of Nuclear Weapons' (ICRC) <https://www.icrc.org/en/download/file/152515/factsheet_2017_treaty_prohibition_of_nuclear_weapons_web.pdf> accessed 20 November 2022

¹⁹ *Ibid*

²⁰ 'Treaty on the prohibition of nuclear weapons' (n 6)

²¹ Treaty on the Prohibition of Nuclear Weapons 2021, art. 13

²² John Borrie, 'An Introduction to Implementing the Treaty on the Prohibition of Nuclear Weapons' (2021) 4 Journal For Peace And Nuclear Disarmament 1, 3

THE TREATY

There were six different languages English, Arabic, French, Chinese, Spanish, and Russian in which the Treaty was authenticated²³. Twenty Articles make up the entire treaty.

- *Preamble*: The NPT, the CTBT, and NWFZ agreements, as well as the "right" of party states to peaceful usage of nuclear energy, all of which are acknowledged in the treaty's 24-paragraph preamble, as well as the significance of the current agreements on international disarmament.²⁴
- *Prohibitions* (Article 1): It is forbidden for party states to engage in any banned behaviour, including the usage, growth, production, manufacturing, purchase, control, collecting, shifting, positioning, or establishment of nuclear weapons.²⁵
- *Declarations* (Article 2): When signing the treaty, a Party-state must specify whether it has terminated any prior nuclear weapons agendas, possesses nuclear weapons today, or owns nuclear weapons belonging to another state. When a state signs the treaty, it is required to remove any nuclear weapons that are present on its land from another country. If it has nuclear weapons of its own, it must destroy them.²⁶
- *Safeguards* (Article 3): The IAEA stipulates that non-nuclear-weapon Nations must at the very least have a complete safeguards agreement with it, "without prejudice" to any upcoming further agreements.²⁷
- *Nuclear-weapon states accession* (Article 4): A nuclear-weapon state can either enter the treaty and thereafter dismantle its nuclear arsenal, or it can first dismantle its arsenal and then accede to the agreement, removing all of its nuclear weapons. Nations that "destroy and join" are required to work with the "competent international authority" of the treaty names to ensure dismantlement. States that "join and destroy" are obligated to straight away put their nuclear arsenals out of commission and provide a limited-time strategy

²³ Treaty on the Prohibition of Nuclear Weapons 2021, art. 20

²⁴ Daryl Kimball (n 5)

²⁵ Treaty on the Prohibition of Nuclear Weapons 2021, art. 1

²⁶ Treaty on the Prohibition of Nuclear Weapons 2021, art. 2

²⁷ Treaty on the Prohibition of Nuclear Weapons 2021, art. 3

for their elimination in under sixty days of signing the treaty.²⁸ Any nation that has nuclear weapons now or in the past must sign an agreement of safeguards with the IAEA to join the prohibition treaty and ensure that nuclear materials aren't being used for weapons instead of for peaceful purposes.

- *National Implementation* (Article 5): It instructs each Party-state to take the essential steps to carry out its duties cited in this Treaty and also to comply with all administrative, judicial, and other steps, including the application of penalties, to prohibit and suppress any action that is forbidden to a Party-state.²⁹
- *Victim assistance and environmental remediation* (Article 6): It directs the state to function in conformity with relevant IHL and human rights law, to deliver fair victim assistance to those impacted by the usage or trial of nuclear weapons, and to carry the essential and suitable steps to cleanse the surroundings in the contaminated zones.³⁰ It makes it a legal need for States to aid victims who fall under their authority. This confirms that the clause is applied, as a simple non-binding clause would have allowed the Nations to shirk their responsibilities to aid the victims. Additionally, the help given by the concerned states to their victims is extremely beneficial and the most promising method to help those in need because they would be in a better situation to evaluate the necessities of the victims, supply compulsory medical facilities, and offer assistance to them.³¹
- *International cooperation and assistance* (Article 7): Each Party-state is obligated to work with the other party states to make this Treaty's implementation easier as a result. Additionally, assistance may be given, among other channels, via the UN system, regional, international, or national organisations or institutions, NGOs, the International Federation of Red Cross (IFRC), the Red Crescent Societies (RCS) and the International Committee of the Red Cross (ICRC), or the Red Crescent Societies and the national Red Cross, or bilaterally.³² The responsibility to help affected States for two purposes:

²⁸ Treaty on the Prohibition of Nuclear Weapons 2021, art. 4

²⁹ Treaty on the Prohibition of Nuclear Weapons 2021, art. 5

³⁰ Treaty on the Prohibition of Nuclear Weapons 2021, art. 6

³¹ Nidhi Singh, 'Victim Assistance under the Treaty on the Prohibition of Nuclear Weapons: An Analysis, Journal for Peace and Nuclear Disarmament' (2020) 3 Journal For Peace And Nuclear Disarmament 265, 269

³² Treaty on the Prohibition of Nuclear Weapons 2021, art. 7

environmental remediation and victim assistance, is outlined in Art 7(6), which declares that Nations who have used or tested nuclear weapons or other types of nuclear combusive apparatuses are required to do so.³³

- *Meeting of Party-states* (Article 8): It mandates that the State parties must hold a meeting to talk over and determine any issue about the execution or application of this Treaty as well as additional steps toward nuclear disarmament.³⁴
- *Costs* (Article 9): It specifies that the expenses of the meetings must be paid by the Party-states and the Nations attending therein as observers who are not parties. The Party-states shall bear the expenses spent by the Secretary General of the UN in connection with the distribution of declarations under Art 2, reports under Art 4, and suggested amendments under Art 10 of the Treaty. The cost of implementing verification measures, destroying nuclear explosive devices or nuclear weapons, ending nuclear-weapons programmes, and converting all facilities connected to nuclear weapons over to other uses ought to be covered by the Party states to whom they are applicable.³⁵
- *Amendments* (Article 10): After the Treaty's implementation, any Party-state may put forth a modification at any time. All Party-states will receive the proposal for review from the Secretary-General. The proposal will be examined at the following review conference or meeting of Party-states if a majority of them indicate their approval for it within 90 days after its distribution. Two-thirds of the Party states must vote in support of passing the amendment.³⁶
- *Settlement of disputes* (Article 11): It states that if there is a disagreement regarding the understanding or implementation of this Treaty between two or more Party-states, the parties shall consult with one another to resolve the disagreement through negotiation or by other friendly means of the parties choosing in under Art 33 of the UN Charter.³⁷

³³ Nidhi Singh (n 31) 271

³⁴ Treaty on the Prohibition of Nuclear Weapons 2021, art. 8

³⁵ Treaty on the Prohibition of Nuclear Weapons 2021, art. 8

³⁶ Treaty on the Prohibition of Nuclear Weapons 2021, art. 10

³⁷ Treaty on the Prohibition of Nuclear Weapons 2021, art. 11

- *Universality* (Article 12): It states that to achieve universal adherence, each Party-state should urge non-Party states to sign, ratify, accept, approve, or accede to it.³⁸
- *Ratification, Acceptance, Approval or Accession* (Article 14), *Entry into Force* (Article 15), *Reservations* (Article 16): States that are signatories must ratify, adopt, or approve this treaty. The Treaty shall be accession-open.³⁹

Ninety days following the deposition of the fiftieth instrument of ratification, acceptance, approval, or accession, this Treaty becomes effective. This Treaty enters into force ninety days following the date on which a State deposits its instrument of ratification, acceptance, approval, or accession by the State that does so after the date of the deposit of the fiftieth instrument of ratification, acceptance, approval, or accession.⁴⁰

Reservations are not permitted concerning the articles of this treaty.⁴¹

- *Withdrawal* (Article 17): If a Party-state determines that extraordinary circumstances about the Treaty's subject matter have compromised the paramount interests of its nation, it may choose to withdraw from the Treaty. After the Depository receives the withdrawal notice, the withdrawal will become effective after twelve months. The requirements of the Treaty will still apply to the Party-state drops out of the treaty if it is taking part in any armed conflict up until the point when it ends.⁴²
- *Relationship with other Agreements* (Article 18), *Depositary* (Article 19): When commitments taken by Party-states about current international agreements to which they are parties are consistent with the Treaty, those duties are unaffected by the Treaty's implementation.⁴³

The UN Secretary-General is appointed as the Treaty's depositary.⁴⁴

³⁸ Treaty on the Prohibition of Nuclear Weapons 2021, art. 12

³⁹ Treaty on the Prohibition of Nuclear Weapons 2021, art. 14

⁴⁰ Treaty on the Prohibition of Nuclear Weapons 2021, art. 15

⁴¹ Treaty on the Prohibition of Nuclear Weapons 2021, art. 16

⁴² Treaty on the Prohibition of Nuclear Weapons 2021, art. 17

⁴³ Treaty on the Prohibition of Nuclear Weapons 2021, art. 18

⁴⁴ Treaty on the Prohibition of Nuclear Weapons 2021, art. 19

IMPLEMENTATION AND UNIVERSALIZATION: EXPECTATIONS

After the TPNW takes effect, Nations that don't already have an agreement of comprehensive safeguards in force have eighteen months to do so (Art 3). They must also pass domestic legislation, if one does not already exist, to incorporate their treaty commitments into national law. To describe how states would carry out the duties in more step-by-step and time-bound terms, states can create an action plan, similar to prior weapons prohibitions. Although it will take far longer than a few years to complete these commitments, nations can start the process now and make some headway.⁴⁵

In the upcoming years, it is anticipated that more supporting nations would ratify and sign the treaty. The motion inviting the TPNW to the UN General Assembly's First Committee in 2020 received support from 118 countries. The internal procedures for signing and ratifying the treaty, which varies by country, are currently underway in a number of these nations. Over a dozen nations stated that they were ratifying the pact during the UN General Assembly of 2020. As soon as a nation ratifies the treaty, it is required by Art 12 to encourage all other nations to do the same, either through bilateral talks or open declarations at international forums.⁴⁶

It is anticipated that all parties will take part in the treaty system and eventually join, even those nations that made the decision not to sign after it was adopted. Long-term, nuclear-armed states and even those that rely on them for security can be anticipated to ratify this agreement and carry the required efforts to ensure complete compliance. Party-states are free to form armed coalitions with other nuclear-armed states as long as they abide by the treaty's provisions. A NATO state can accede to the TPNW and implement the necessary changes to its actions and policies. The nations of NATO would have to renounce their involvement in the alliance's nuclear weapons component and affirm that they do not support any actions that are forbidden under the treaty.⁴⁷ It will be more difficult for nations that are not parties to the treaty to defend

⁴⁵ Alicia Sanders-Zakre & Beatrice Fihn, 'Implementation of the Treaty on the Prohibition of Nuclear Weapons: Hopes and Expectations for the Future' (2021) 4 *Journal for Peace and Nuclear Disarmament* 94, 95

⁴⁶ *Ibid* 96

⁴⁷ Alicia Sanders-Zakre & Beatrice Fihn (n 46) 97

their stance as not being a part of international law rules on nuclear spears to their citizens and other nations as the treaty's normative force and membership expand.⁴⁸

THE FIRST MEETING OF TPNW (21-23 JUNE 2022 VIENNA, AUSTRIA)

"The Vienna Conference on the Humanitarian Impacts of Nuclear Weapons", held in Austria before the party states meeting, included testimony from people who had survived nuclear explosions as well as panel debates and demonstrations on recent technical findings about the catastrophic consequences of nuclear weapon usage. After three such conferences in Oslo, Nayarit, Mexico, and Vienna in 2013 and 2014, this one on June 20 was the fourth. By informing diplomats about how using nuclear weapons affects people, their societies, and the environment, they opened the path for the TPNW. The delegations discussed a wide range of issues associated with treaty implementation that would make up an action plan of 50-point, such as how to convince more nations to sign on, how to set the body of disarmament verification, how to act on the agreement's positive responsibilities, and how to set deadlines for nuclear arsenals removal after States in control of nuclear arms enter the TPNW.⁴⁹

Art 12, which instructs party states to "urge" all other Nations to ratify the agreement "to achieve universal adherence," was the subject of much debate. The action plan outlines how to advance the treaty and its standards and requests that party states appoint national coordinators for universalization activities of Art 12 in sixty days. These instruments include démarches, outreach gatherings, conferences and seminars held abroad, resolutions adopted by the UN General Assembly, and high-level official pronouncements.⁵⁰

Art 4, which outlines the requirements for removing nuclear weapons, was another significant issue. The nations' parties stipulated a 10-year timeline for the elimination of nuclear weapons, with room for potential extensions. They also resolved that nations hosting nuclear weapons in a forward position must take them down 90 days after joining the TPNW. Members are

⁴⁸ *Ibid*

⁴⁹ Rebecca Davis Gibbons & Stephen Herzog, 'The First TPNW Meeting and the Future of the Nuclear Ban Treaty' (*Arms Control Association*, September 2022) <<https://www.armscontrol.org/act/2022-09/features/first-tpnw-meeting-future-nuclear-ban-treaty>> accessed 22 November 2022

⁵⁰ *Ibid*

obligated to "designate a competent international authority or authorities to negotiate and verify the irreversible termination of nuclear-weapons programmes," according to Article 4 of the treaty. Discussions on Articles 6 and 7 of the treaty were spearheaded by Kazakhstan and Kiribati, two nations that have been severely impacted by the terrible consequences of nuclear testing.⁵¹

The parties decided to create expert consultative bodies on the conference's final day. They chose to hire an informal coordinator to concentrate on the TPNW's compatibility with previous nuclear treaties, and they established a technical advisory panel of up to fifteen experts to offer specialised guidance for treaty implementation. Following the countries' working papers on the subject, the treaty participants invited Thailand and Ireland to coordinate their initiatives.⁵²

Party states created a coordination committee to carry out work related to treaty implementation in the two years before the following summit. It will include the incoming president-designate, Kmentt, the heads of the universalization informal committees, victim support, and surrounding cleanup, as well as qualified international authorities. It will convene at least once every three months. Representatives of ICAN and the Red Cross will be present. Tasks related to treaty implementation will continue during meetings of state parties and will be ensured by the intersessional process.⁵³

Party states approved the Vienna declaration. The TPNW's objectives and full implementation are supported, and the declaration proclaims unwavering opposition to nuclear weapons and nuclear deterrence. The Vienna declaration strongly opposes nuclear threats without mentioning any particular countries while referring to recent Russian conduct. The proclamation also criticises nuclear-powered nations that have attempted to persuade non-nuclear-powered states to abstain from signing the pact; implicitly, this criticism is directed at NATO's three nuclear-armed members, France, the UK, and the US. The proclamation

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ *Ibid*

acknowledges the NPT's significance on a worldwide scale and "[deplores] threats or acts that risk undermining it."⁵⁴

The party states were continuously occupied with the views of observers and nuclear-powered States during the meeting, which appeared to be as much about executing the treaty as it was about answering persistent criticism of the agreement. These discussions mainly focused on three topics: if or how the NPT and TPNW are complementary or clash with one another; how much some governments value suppression over disarmament; and the criticism of Russia's nuclear threats during the war.⁵⁵

Regarding the first issue, practically every Party-state reaffirmed in its national statement the compatibility of TPNW with the framework already in place for the nonproliferation regime. This covers the NPT in particular, the NWFZs, and the CTBT. Such compatibility was a crucial message since the party states intended to refute nuclear-weaponed states' allegations that the new pact would weaken the NPT, which has long served as the cornerstone of efforts to restrict and reduce armaments and cause discord among its signatories.⁵⁶

On the second issue, many delegations condemned countries that depend on nuclear spears for their defence. These statements brought notice to differences between nations that view nuclear spears as security and nations that view them as a threat.⁵⁷ Finally, a significant number of observer States of Europe wished for the party states to firmly denounce the Russian attack on Ukraine, particularly Putin's nuclear threats.⁵⁸

It is difficult to argue against the first conference of TPNW party states' success in terms of planning and policy. One reason is that nation that has not yet banned the most potent weapons in the world, weapons that could endanger humanity's future have not yet been able to secure their entry into force. Following nuclear-armed states' entry into the treaty, future policy initiatives will implement future nuclear dismantlement, boost public outreach, and address the

⁵⁴ *Ibid*

⁵⁵ *Ibid*

⁵⁶ *Ibid*

⁵⁷ *Ibid*

⁵⁸ *Ibid*

collateral effects of nuclear weapons. Despite the excitement among many TPNW supporters, there are still numerous obstacles to overcome. Long-standing nuclear tensions between governments have been brought to light and exacerbated by Russia's war in Ukraine. There could be two lessons here. First, the invasion of Ukraine—a state without a nuclear-armed patron, following the surrender of its Soviet nuclear arsenal which was inherited, has heightened interest in nuclear deterrence and extended deterrence among some powers. Putin's nuclear threats, secondly, seem to have additionally persuaded governments and campaigners of the risks associated with owning these lethal Weapons. Everyone on the earth would be impacted by the terrible effects that the stationing of nuclear weapons would have on communities, the environment, and politics. Not just governments are important actors.⁵⁹

Mexico and Kazakhstan, respectively, will preside over the TPNW party states' subsequent meetings, which will be held in 2023 and 2026, at the UN, New York. Treaty proponents can be glad of what they did in Vienna while still staying realistic about the challenging work that still needs to be done. It will undoubtedly be challenging to put the nuclear weapons prohibition pact into effect and attract new members, specifically from nations that depend on nuclear weapons for safety.⁶⁰

PROBLEMS WITH THE TREATY

The concept of a "nuclear ban treaty" is based on a simple structure, sometimes known as "a simple-ban treaty." Simple ban treaty proponents contend that the mere fact that the treaty exists would be sufficient to put pressure on nuclear-weaponed States to disarm. The Treaty does not have comprehensive verification and dismantlement clauses. The Treaty suggests that an international body chosen by the State Parties assume control of the duty of verifying the claims made for disarmament. It's not apparent which organisation this might be, though. The IAEA lacks competence in disarmament verification and weapon dismantlement despite possessing what may be the best expertise in nuclear subjects. The IAEA would need to significantly expand its staff, knowledge, and capabilities if it were to take on the issue of verifying complete nuclear

⁵⁹ *Ibid*

⁶⁰ *Ibid*

disarmament. It is not at all clear if member states will support it. If a prohibition resulted in widespread nuclear disarmament, the current state of affairs would prioritise worldwide political corruption.⁶¹ Simply put, the state that managed to violate the existing agreement while maintaining its control over nuclear weapons might hold the entire world hostage. Additionally, the fundamental drawback of this Treaty is that many States that are technically able to create nuclear weapons as well as all nuclear-weapon Nations and their supporters have not ratified it.⁶²

The states that have signed the TPNW are required to abide by its requirements. The TPNW would have to become recognised as customary international law for it to be enforceable against non-parties. Because the nuclear weapons prohibition has not yet attained the rank of custom, the TPNW does not presently embody customary international law, but its provisions may influence the establishment of custom in the future. State practice and *opinio juris* must be weighed separately in determining the existence and scope of customary international law. While *opinio juris* considers whether a particular practice is recognised as law, state practice refers to a common practice.⁶³

WHY NUCLEAR DISARMAMENT IS NEEDED?

“Attack is the secret of defence; defence is the planning of an attack”

– Sun Tzu in “The Art of War”.

We currently face two significant threats: nuclear weapons and climate change. Nuclear bombs can kill us much more quickly than carbon dioxide, making them the most indiscriminately horrible weapons yet created. The first threat comes from the current stockpile. There are still

⁶¹ Michal Onderco, ‘Why nuclear weapon ban treaty is unlikely to fulfil its promise’ (2017) 3 Global Affairs 391, 394, 395

⁶² Carlo Trezza, ‘The new Treaty on the Prohibition of Nuclear Weapons: pros and cons’ (NATO Defence College Foundation, January 2021) <<https://www.natofoundation.org/food/the-new-treaty-on-the-prohibition-of-nuclear-weapons-pros-and-cons-carlo-trezza/>> accessed 23 November 2022

⁶³ Michal Onderco & Andrea Farrés Jiménez, ‘A Comparison Of National Reviews Of The Treaty On The Prohibition Of Nuclear Weapons’ (2021) 76 EU Non-Proliferation and Disarmament Consortium <<https://www.sipri.org/publications/2021/eu-non-proliferation-and-disarmament-papers/comparison-national-reviews-treaty-prohibition-nuclear-weapons-0>> accessed 21 November 2022

approximately 23,000 nuclear warheads surviving, with a cumulative destructive power of about 150,000 Hiroshima or Nagasaki-sized bombs, despite significant reductions that took place soon after the end of the Cold War. The second threat is proliferation, which involves new states building up fresh stockpiles and all the risks associated with their intentional or unintentional use. Others will seek nuclear weapons as long as any state has them.⁶⁴ The third and possibly final risk is terrorism. Several terrorist groups are working extremely hard to acquire nuclear weapons. Now, we can't even begin to comprehend the destruction if they manage to get nuclear weapons there.⁶⁵

Nuclear radiation affects not just people but also plants and soils. Both plant tissue damage and plant growth inhibition are caused by radioactive substances. Due to DNA damage, mutations are also a possibility. Radioactive soil contamination stops plants from absorbing nutrients, which makes them unproductive.⁶⁶ The impacts of radioactive radiation can entirely alter an area's biodiversity. The nuclear disaster of Fukushima Daiichi in Japan serves as an illustration of the consequences of radioactive radiation on land. Radiation clouds were spread across a significant portion of Japan's agricultural area by the nuclear reactor explosion. As a result, crops became radioactive and unfit for human consumption. Also, the radioactive soil produced radioactive plants or became unproductive. The radiation had an impact on more than 81,000 hectares of land.⁶⁷

Additionally, the environment and marine life have been harmed by radiation from nuclear tests. As long as nuclear weapons are still in existence and huge sums of money are spent on maintaining and modernising them at a time when budget restrictions make it difficult to address the most urgent humanitarian needs in the world, there is a risk that they will be used

⁶⁴ Gareth Evans, 'Nuclear Weapons As A Threat To Global Peace' (*Gareth Evans*)
<<http://www.gevans.org/speeches/speech430.html>> accessed 23 November 2022

⁶⁵ *Ibid*

⁶⁶ 'Effects of Nuclear Radiation on the Environment' (*UK Essays*, 20 September 2021)
<<https://www.ukessays.com/essays/biology/effects-of-nuclear-radiation-on-the-environment-biology-essay.php?vref=1>> accessed 23 November 2022

⁶⁷ *Ibid*

once more, either intentionally or unintentionally.⁶⁸ The majority of nuclear-armed nations still believe that the "nuclear deterrence" theory, which is built on mistrust and seeks to maintain peace by threatening mass murders, is still necessary for maintaining world security. Even scarier, there have been ideas about how to use them.⁶⁹ Nuclear weapons are a threat to world peace.

CONCLUSION

The most brutal weapons ever created, nuclear bombs kill and maim without regard to whom they are killing or maiming, and their effects last for decades. They are the sole ever-created weapons that are capable of eradicating all life on Earth. The UN has developed numerous conventions and accords, but none of them has been very effective in ridding the world of the danger of the usage of nuclear weapons. The use of any nuclear weapon by any nation or by terrorists is a perpetual threat to the states if the situation degenerates. Despite several efforts to diminish or abolish nuclear weapons, the risks from countries that conserve their arsenals, don't plan to completely disarm, or don't stick to safety rules for nuclear material still exist. One of the most significant issues that world leaders are currently facing is the containment of nuclear spears and the prevention of nuclear warfare. Even the most recent nuclear weapons pact is insufficient to prohibit nuclear weapons from being used. Even if it is binding, the non-signatories are still not covered. Because the threat still exists, it isn't strong enough.

One thing is crystal obvious from the past of the nuclear age: governments seek nuclear weapons mainly because others do. As per the deterrence theory, possessing nuclear weapons of your own protects them. Other States will desire nuclear weapons because any other State possesses them. It seems inconceivable that such weapons will not be utilised later in the future, whether by accident, calculation error, or design. And any such application would be disastrous. Complacency is defied by the dangers and risks posed by the failure to prevent new governments from getting nuclear weapons, prohibit terrorists from obtaining such weapons,

⁶⁸ Kazumi Matsui, 'Why we need complete nuclear disarmament' (*World Economic Forum*, 22 April 2015) <<https://www.weforum.org/agenda/2015/04/why-we-need-complete-nuclear-disarmament/>> accessed 23 November 2022

⁶⁹ *Ibid*

prevent current nuclear-armed states from disarming, and effectively manage the rapid spread of civil nuclear energy. A substantial focus on disarmament and nuclear non-proliferation is required to address one of the most pressing and significant global policy issues.