



TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS SET TO ENTER INTO FORCE: PROSPECTS AND CHALLENGES

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)



The Treaty on the Prohibition of Nuclear Weapons (TPNW) is all set to enter into force as Honduras became the 50th country to ratify the treaty on October 24, 2020. The treaty will thus enter into force 90 days later on January 22, 2021. This is a timely opportunity to assess what the treaty is about, what it means for non-proliferation regime and for efforts to abolish nuclear weapons.

The head of one of the chief campaigners of the treaty, the International Campaign to Abolish Nuclear Weapons (ICAN), Beatrice Fihn said that this was, “a new chapter for nuclear disarmament. Decades of activism have achieved what many said was impossible: nuclear weapons are banned.”¹ While UN Secretary General, Antonio Guterres said that, “It represents a meaningful commitment towards the total elimination of nuclear weapons, which remains the highest disarmament priority of the United Nations.”²

The Treaty was adopted on July 7, 2017 after years of campaigning by 122 countries at the UN General Assembly. It is the first legally binding instrument for nuclear disarmament in decades. The need to negotiate such a treaty came from realization of the catastrophic consequences of deliberate or accidental use of nuclear weapons as well as a mounting sense of frustration that key nuclear disarmament commitments made by the nuclear-weapon states in the Nuclear Non-Proliferation Treaty (NPT) were not being fulfilled.

¹ UN treaty banning nuclear weapons set to enter into force in January”, October 25, 2020, <https://news.un.org/en/story/2020/10/1076082>

² Ibid.

Under the terms of the TPNW, states-parties are, “prohibited to use, threaten to use, develop, produce, manufacture, acquire, possess, stockpile, transfer, station, or install nuclear weapons or assist with any prohibited activities.”³ The treaty bans the use or threat of nuclear weapons use. It also prohibits signatories from allowing “any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices”⁴ on their territory. The terms for joining of a nuclear weapons state are that it must eliminate nuclear weapons before joining or must present a plan for doing so within 60 days of joining. Presently, 84 states have signed the treaty and 50 have ratified.⁵

While the treaty enjoys support from non-nuclear weapon states, states possessing nuclear weapons have either boycotted the treaty negotiations or expressed reservations. The five recognized nuclear weapon states (NWS) the United States, the United Kingdom, Russia, China and France, have not signed the treaty. It is unlikely that they will do so in the foreseeable future. These states have maintained that it will detract from disarmaments and other nonproliferation initiatives like the Fissile Material Cut-off Treaty, the Comprehensive Nuclear Test Ban Treaty and would undermine the NPT.⁶ The NPT would be undermined if states have a choice between the two treaties.

Proponents of the TPNW treaty argue that it closes a gap in international law regarding nuclear weapons. While non-nuclear weapons states are prohibited from developing nuclear weapons under the NPT, five states – US, Russia, China, France and UK are recognized as nuclear weapons states. Nuclear weapons are thus not banned by NPT. TPNW supporters argue that, in fact, it reinforces the NPT and its commitment for disarmament under the Article VI. It endorses the norm against nuclear weapons that will help action against nuclear risk and promote disarmament.

The treaty can pose a problem for some states that are part of collective security alliance systems or come under nuclear umbrella of a nuclear weapon state. At least five NATO states have, since the 1950s, hosted US nuclear weapons as part of the collective security strategy. These include Belgium, Germany, Italy, the Netherlands and Turkey.⁷ In many NATO states like Netherlands and Germany, there are civil society organizations and their political representative that are staunch supporters of

³ Article 1 of the Treaty on the Prohibition of Nuclear Weapons, <https://www.un.org/disarmament/wp-content/uploads/2017/10/tpnw-info-kit-v2.pdf>

⁴ Ibid.

⁵ “The Treaty on the Prohibition of Nuclear Weapons At A Glance”, *The Arms Control Association*, Factsheet, October 2020, <https://www.armscontrol.org/factsheets/nuclearprohibition>

⁶ Ibid.

⁷ “Nuclear Disarmament NATO”, *Nuclear Threat Initiative*, Updated June 29, 2019, <https://www.nti.org/analysis/articles/nato-nuclear-disarmament/>

the TPNW.⁸ There are fears that public and domestic support in some of these countries may prevent them from hosting nuclear weapons as part of the NATO strategy. Also, if the supporters of TPNW come into power and sign the treaty, NATO could face a crisis.

While it makes sense for states that have signed the NPT and have forgone the right to develop nuclear weapons to sign the TPNW and advocate a total ban on nuclear weapons, the nine states that possess nuclear weapons including the 5 NPT NWS are unlikely to sign the treaty. Neither are security allies like Japan and South Korea of nuclear-armed states, and NATO states are likely to sign at present.

Some NWS have actively campaigned for states to withdraw support for the TPNW. The US, the UK, and France issued a joint statement on July 7, 2017, a day after the treaty was adopted, opposing the treaty, saying “it is incompatible with the policy of nuclear deterrence, which has been essential to keeping the peace in Europe and North Asia for over 70 years” and “risks undermining the existing international security architecture which contributes to the maintenance of international peace and security.”⁹ The US, in fact, is one of the leading opponents of the treaty and has been vocal about its opposition. In October 2020 it issued a non-paper and an accompanying letter that was sent to many states. It stated, “we recognize your sovereign right to ratify or accede to the Treaty on the Prohibition of Nuclear Weapons (TPNW), we believe that you have made a strategic error and should withdraw your instrument of ratification or accession.”¹⁰ It also claimed that five NPT recognized nuclear powers and NATO stand unified against potential repercussions of the treaty. The non-paper claimed that the TPNW is, “dangerously counterproductive” to the NPT.

China issued a supportive statement in principle on Twitter on October 24, 2020 saying, “China has always been advocating complete prohibition and thorough destruction of nuclear weapons, which is fundamentally in line with purposes of (the treaty). China will continuously make relentless efforts towards a nuclear-weapon-free world.”¹¹

Pakistan also has a similar stance on TPNW. Pakistan, “is committed to the goal of a nuclear weapons free world through the conclusion of a universal, verifiable and non-discriminatory,

⁸ George Perkovich, “Living With the Nuclear Prohibition Treaty: First, Do No Harm,” *Carnegie Endowment*, November 10, 2020, <https://carnegieendowment.org/2020/11/10/living-with-nuclear-prohibition-treaty-first-do-no-harm-pub-83198>

⁹ David Krieger, “U.S., UK and France Denounce Nuclear Ban Treaty,” July 13, 2017, <https://www.wagingpeace.org/u-s-uk-france-denounce-nuclear-ban-treaty/>

¹⁰ Daryll Kimball, “Ban Treaty Set to Enter Into Force,” November 2020, <https://www.armscontrol.org/act/2020-11/news/ban-treaty-set-enter-into-force>

¹¹ Ibid.

comprehensive convention on nuclear weapons.”¹²It maintains that, “It is indispensable for any initiative on nuclear disarmament to take into account the vital security considerations of each and every State.”¹³ Since the TPNW did not take into consideration the security interests of states like Pakistan, it did not take part in its negotiation and maintains that it cannot become party to this treaty.

Israel, one of the nine NWS that possesses the weapons but has never publicly admitted having nuclear weapons, is not a signatory to the TPNW. It has opposed the treaty and boycotted its negotiation in the UN General Assembly.¹⁴ Similarly, North Korea did not participate in the negotiations of the Treaty and has not yet signed it.¹⁵

India also opposes the TPNW. It voted against a UN General Assembly resolution in 2019 that welcomed the adoption of the treaty. India abstained from voting on the UN General Assembly resolution in 2016 that formed mandate for states to commence the negotiations in 2017.¹⁶ While it says it supports the goal of a nuclear weapon free world, it “believes that this goal can be achieved through a step-by-step process underwritten by a universal commitment and an agreed global and non-discriminatory multilateral framework.”¹⁷

Thus, the NWS at present do not support the treaty or intend to joint it. The treaty in itself would not eliminate nuclear weapons. However, it can help create a norm that would delegitimize nuclear weapons and their use. At the same time, the treaty creates problems for NWS states like US, their NATO allies, especially those countries that have hosted nuclear weapons for US, and also for their security allies like Japan and South Korea. It also creates a moral impediment for countries that are indulging in massive nuclear modernization, pursuing new nuclear weapons, and indulging in a new nuclear arms race. The efforts for nuclear disarmament embodied in the TPNW are noble and admirable in principle. However, complete nuclear disarmament would remain a utopian concept unless the great powers like US and Russia are willing to abrogate their reliance on the weapons, and legitimate security concerns of smaller states like Pakistan are addressed.

¹² Press Statement on the Treaty on the Prohibition of Nuclear Weapons (Nuclear Weapons Ban Treaty), August 7, 2017, <http://mofa.gov.pk/press-statement-on-the-treaty-on-the-prohibition-of-nuclear-weapons-nuclear-weapons-ban-treaty/>

¹³ Ibid.

¹⁴ “Positions on the Treaty,” International Campaign to Abolish Nuclear Weapons, www.icanw.org.

¹⁵ “North Korea,” https://www.icanw.org/north_korea

¹⁶ “India,” <https://www.icanw.org/india>

¹⁷ “Response by the Official Spokesperson to a media query regarding India’s view on the Treaty to ban nuclear weapons,” Ministry of External Affairs, India, July 18, 2017, <https://www.mea.gov.in/media-briefings.htm?dtl/28628>