



Dossier

Treaty on the Prohibition of Nuclear Weapons

The Treaty on the Prohibition of Nuclear Weapons (TPNW) came into force on January 22 2021. It is the outcome of a truly international campaign, steered by the International Campaign to Abolish Nuclear Weapons (ICAN), involving many peace and disarmament groups.

In the pages that follow, we present the thoughts and opinions of activists deeply involved in the campaign, along with the text of the Treaty itself. In addition, we include historical documents and further analysis of the Treaty and next steps in the vital work of creating a world free from nuclear weapons.

**THE
BAN
IS
HERE**



Through the doorway

Setsuko Thurlow



Setsuko Thurlow survived the atomic bombing of Hiroshima in 1945 and, as she explains, has long campaigned for the abolition of nuclear weapons.

The Treaty on the Prohibition of Nuclear Weapons has entered into force! This truly marks the beginning of the end of nuclear weapons. When I learned that we reached our 50th ratification, I was not able to stand. I remained in my chair and put my head in my hands and I cried tears of joy. I have committed my life to the abolition of nuclear weapons. I have nothing but gratitude for all who have worked for the success of our treaty. I have a powerful feeling of solidarity with tens of thousands of people across the world. We have made it to this point.

As I sat in my chair, I found myself speaking with the spirits of hundreds of thousands of people who lost their lives in Hiroshima and Nagasaki. I was immediately in conversation with these beloved souls – my sister, my nephew Eiji, other dear family members, my classmates, all the children and innocent people who perished. I was reporting to the dead, sharing this good news first with them, because they paid the ultimate price with their precious lives. Like many survivors, I made a vow that their deaths would not be in vain and to warn the world about the danger of nuclear weapons, to make sure that no one else suffers as we have suffered. I made a vow to work for nuclear disarmament until my last breath. And now we have reached a milestone in our decades' long struggle – the Treaty on the Prohibition of Nuclear Weapons will become international law.

I have a tremendous sense of accomplishment and fulfilment, a sense of satisfaction and gratitude. I know other survivors share these emotions – whether we are survivors from Hiroshima and

Nagasaki; or test survivors from South Pacific island nations, Kazakhstan, Australia and Algeria; or survivors from uranium mining in Canada, the United States or the Congo. All those who have been victimized by the barbaric behavior of nine nations who continue to develop more horrendous weapons, prepared to repeat nuclear massacres far more devastating than the atomic bomb that levelled my hometown, Hiroshima. For the victims and survivors, this initial success with the Treaty on the Prohibition of Nuclear Weapons is tremendously uplifting. I celebrate this moment with my brothers and sisters across the world who have been victimized, and still raise their voices, and still survive.

We also celebrate with those people across the world who recognize the ultimate evil of nuclear weapons, instruments of radioactive violence and omnicide that have kept the entire world hostage for all these 75 years. We celebrate with the global community of anti-nuclear activists who have come together and have worked for the success of this treaty. I am especially grateful to my dear colleagues in the International Campaign to Abolish Nuclear Weapons. ICAN laid the groundwork to collaborate across the divide of diplomacy and activism, to achieve something of profound and lasting importance.

I also want to acknowledge how moved I am that in the preamble to the treaty, *hibakusha* are identified by name. This is the first time in international law that we have been so recognized. We share this recognition with other *hibakusha* across the world, those who have suffered radioactive harm from nuclear testing, from uranium mining, from secret experimentation. And furthermore, the treaty recognizes that indigenous people have been disproportionately affected by the production of nuclear weapons. We in *hibakusha* and indigenous communities uniquely understand that not only the use of nuclear weapons in war but also the testing and production of nuclear weapons causes death and unspeakable suffering through invisible radioactive contamination. And here the treaty recognizes that women and girls are more susceptible to the effects of radiation – that there are gendered implications to radioactive violence.

I am moved to acknowledge the positive obligations of the treaty as well – such as victims' assistance and environmental remediation which will be a hallmark for taking responsibility for the inter-generational effects of radiation. It is vitally important that we all understand that the nuclear age will continue far beyond the nuclear weapon age. We will need to contain and care for radioactive materials into the far future.

But for now, in this joyous present moment, we can rejoice in making

our first move. I cannot truly express with words my feelings of overwhelming gratitude. How we have struggled in spite of being confronted by indifference and ignorance. How we have struggled in spite of being ridiculed by nuclear armed and nuclear dependent states. In spite of that and more, we have made it to this point – nuclear weapons are now illegal under international law.

Nuclear abolitionists everywhere can be incredibly encouraged and empowered by this new legal status. Now, with greater intensity and purpose, we will push forward. While this is a time to celebrate, it is not a time for us to relax. The world is ever more dangerous. Yes, we have made it to this point, but we have a long path to cover until we reach our goal of the total elimination of nuclear weapons.

It is unlikely that I will see that day. It is unlikely that any atomic bomb survivor with their own lived memories will bear witness on that day but with the Treaty on the Prohibition of Nuclear Weapons, we can be certain that that beautiful day will dawn. And on that day, we *hibakusha*, test survivors, indigenous people and others, victims to the inter-generational cruelty of radioactive poison, will be remembered and someone alive at present will report to us. Because of our work, our solidarity, our love for this world, we will be a part of a much greater celebration in spirit, when nuclear disarmament will be achieved as part of a greater movement that encompasses peace, justice, equality and compassion for all.

The Treaty on the Prohibition of Nuclear Weapons has opened a new door, wide. Passing through it we begin a new chapter in our struggle – with a mighty embrace of gratitude from those we have lost, and a heartfelt welcome from those who are yet to come.

The beginning of the end of nuclear weapons has arrived! Let us step through the doorway now!

www.icanw.org

Turning Point

Daryl G. Kimball

The Treaty on the Prohibition of Nuclear Weapons (TPNW) marks a turning point in the long history of the effort to reduce nuclear risks and to eventually eliminate the 13,000 nuclear weapons that remain today, 90 per cent of which are held by the United States and Russia. On Oct. 24, 2020, Honduras became the 50th country to ratify the treaty, triggering its entry into force 90 days later, on Jan. 22, 2021.

That date will mark the first time since the invention of the atomic bomb that nuclear weapons development, production, possession, use, threat of use, and stationing of another country's nuclear weapons on a state party's national territory are all expressly prohibited in a global treaty. The TPNW's entry into force will arrive almost exactly 75 years after the United Nations General Assembly's (UNGA's) adoption, on Jan. 24, 1946, of its very first resolution, Resolution 1(I), which was to establish a commission to ensure "the elimination from national armaments of atomic weapons and all other major weapons adaptable to mass destruction".

This milestone is the culmination of a decade-long initiative spearheaded by a group of key non-nuclear weapon states and a global coalition of civil society campaigners working through the International Campaign to Abolish Nuclear Weapons (ICAN), recipient of the Nobel Peace Prize in 2017 for its unflagging efforts. Negotiations on the TPNW were the outgrowth of a series of three conferences on "The Humanitarian Impacts of Nuclear Weapons" held in Norway, Mexico, and Austria between 2013 and 2014. The so-called "Humanitarian Initiative" re-focused

Daryl Kimball is the executive director of the Arms Control Association.

attention on the catastrophic dangers to all humanity posed by nuclear weapons and led to the initiation of negotiations on the treaty at the UN. The talks were completed in July 2017 at the United Nations in New York by a group of more than 120 non-nuclear-weapon states.

The authors of the TPNW argue that because the use of nuclear weapons would violate international humanitarian law, their possession and use must be prohibited. Since the beginning, the major nuclear powers, particularly the United States, Russia, France, and the UK, have tried to slow the momentum toward the TPNW. They claim their security interests justify the perpetuation of their nuclear deterrence doctrines, which envision the potential use of nuclear weapons on a massive scale.

Filling a Legal Gap

The TPNW effort was designed to fill a “legal gap” in the global nuclear non-proliferation regime regarding the prohibition of nuclear weapons. The 1968 Non-proliferation Treaty (NPT) did not expressly outlaw nuclear weapons, even though their use would be contrary to the rules of international law applicable in armed conflict.

The NPT obligates non-nuclear weapon states to forswear nuclear weapons, but it recognized the five original nuclear weapon states — the United States, Russia, the United Kingdom, France, and China — already possessed them. Article VI of the NPT obliges all of its 190 States parties 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”. But the NPT does not explicitly ban nuclear weapons, and some nuclear-armed states (India, Israel, and Pakistan) are not members of the NPT. So, while the NPT created the environment and pressure for advances on nuclear disarmament, progress has been intermittent and incomplete.

A Wake-Up Call Amid Rising Risks of Nuclear War

The TPNW arrives at a time when the risks of nuclear war are rising and as the world’s major nuclear armed states are building up their nuclear weapons capabilities. It enters into force at the same time that other key agreements limiting nuclear weapons are being discarded or threatened, and as the major nuclear-armed states are failing to meet their NPT nuclear-disarmament obligations. Public attention, too, is focused on other global threats.

The entry into force of the TPNW is a much-needed wake-up call that

has the potential to stimulate further action on disarmament and take us closer to a world without nuclear weapons. By strengthening the international legal structure and political norms against nuclear weapons possession and use, the TPNW further delegitimizes nuclear weapons as instruments of power.

The new treaty also reflects the fact, often forgotten in the United States, that for the majority of the world's states, nuclear weapons — and policies that threaten their use for any reason — are immoral, dangerous, and unsustainable. The TPNW is, quite deliberately, a powerful challenge to the nuclear deterrence policies of the world's nine nuclear-armed states, which dangerously assume that military postures that are designed to threaten the use of nuclear weapons on a massive scale can be perfectly managed, even in a crisis, and will never fail to prevent the outbreak of nuclear war. This is why the United States and the other nuclear-armed states boycotted the negotiations and why they have, for the most part, been very critical of the agreement.

US Critique Misses the Mark

In September 2020, US officials sent a message through diplomatic channels to a significant number of states urging them not to join the TPNW. The missive even urged states that have signed and ratified the treaty to withdraw their support. The letter, accompanied by a “non-paper” listing US concerns about the treaty, stated that: “Although 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”.

The US letter claims that the five original nuclear powers and all members of the NATO alliance “stand unified in our opposition to the potential repercussions” of the treaty. China, however, issued a more conciliatory view in a statement via Twitter on Oct. 24:

“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.”

The US paper also claims that “the TPNW is dangerously counterproductive to the [nuclear Non-proliferation Treaty (NPT)].” This argument is without serious merit. TPNW negotiators have repeatedly underscored that the new treaty seeks full complementarity between the

NPT and the new agreement.

According to Thomas Hajnoczi, director for disarmament, arms control, and non-proliferation for the Austrian Foreign Ministry, “The TPNW did not create a parallel universe to the traditional one founded on the NPT”. In an article published in *The Nonproliferation Review* earlier this year, Hajnoczi argues that “on the contrary, it makes the existing universe of legal instruments around the NPT stronger”.

The TPNW’s negotiators note that the pact advances the existing NPT safeguards regime by legally obliging its state parties to keep in place any additional safeguards arrangements they have voluntarily agreed to implement with the International Atomic Energy Agency.

The TPNW also reinforces the international norm against nuclear testing established by the 1996 Comprehensive Nuclear Test Ban Treaty (CTBT), which prohibits “any nuclear weapon test explosion or any other nuclear explosion”. The CTBT has been signed by 184 states.

The TPNW sets forth, for the first time in a nuclear treaty, obligations of assistance to victims of testing and use of nuclear weapons and of environmental remediation of areas affected by testing and use. This reflects the origins of the treaty and the recognition of the unacceptable suffering and devastation that have resulted from the use of nuclear weapons against the people of Hiroshima and Nagasaki and from more than 2,000 nuclear weapons test explosions detonated around the globe, from New Mexico and Nevada and Alaska, across Russia, in Western China, in Kazakhstan, across the South Pacific, in the aboriginal lands in Australia, in Algeria, in South Asia, and until 2017, by North Korea.

Oddly, the US non-paper argues that the pressure that will be exerted by the TPNW to drive nuclear disarmament “disproportionately impacts democracies and democratic alliances” relative to autocratic states like Russia and China, and therefore puts democracies at a disadvantage. According to this strange logic, leaders of democracies should ignore the views of their publics. In fact, history shows that a strength of democratic governments is that they reflect public will. According to a 2020 poll, conducted in the United States July 2–19 for the Chicago Council on Global Affairs, two-thirds (66 per cent) of respondents believe that “no country should be allowed to have nuclear weapons,” which is exactly the vision outlined by the TPNW.

Further US efforts to undermine the TPNW are counterproductive and highly divisive. In an Oct. 25 interview with the South African Broadcasting Corporation, South Africa’s ambassador to the UN in Geneva, Nozipho Mxakato-Diseko, said: “The US is scared that it cannot

justify morally [or] legally the possession of these weapons. They can't blame us [if] they did not want to negotiate [on the TPNW]. Instead they stood outside the General Assembly picketing, [which is] a ridiculous thing for a member of the Security Council. You negotiate with member states. Leadership is about negotiating."

By "asking States to un-ratify a treaty," she said, there is "a danger to the Non-proliferation Treaty. What's to stop you from un-ratifying the NPT? We cannot pick and choose the bits of multilateralism that we want."

ICAN Executive Director Beatrice Fihn said in a statement, "The 50 countries that ratify this Treaty are showing true leadership in setting a new international norm that nuclear weapons are not just immoral but illegal."

Looking Ahead

Going forward, the United States and the world's other nuclear-armed states should publicly recognize its arrival as a good faith and constructive effort by the majority of the world's nations to eliminate the danger of these weapons and build the legal framework for their eventual elimination.

Now that the TPNW exists, all states — whether they are opponents, supporters, sceptics, or undecideds on the treaty — need to learn to live with it responsibly and find creative ways to move forward together to press for progress on their common challenge: preventing nuclear conflict and eventually ridding the world of nuclear weapons.

With the TPNW restoring the navigational settings for the long journey ahead, responsible states can start by agreeing to a common plan of action on nonproliferation and disarmament at the once-every-five-years gathering to review implementation of the NPT in 2021. Measures they could adopt include, but are not limited to, action that would lead to:

- freezing the size of existing nuclear arsenals and fissile material stockpiles;
- a multilateral agreement on no first use of nuclear weapons;
- securing the ratifications needed to bring the CTBT into force;
- reviving the US-Russian disarmament process, beginning with a five-year extension of New Strategic Arms Reduction Treaty;
- verifiable limits leading to the removal of all shorter-range nuclear

weapons, including the 160 US tactical nuclear weapons in five European NATO countries, which would enable those states to join the TPNW;

- banning the introduction of new and destabilizing types of nuclear weapons; and concluding legally binding commitments to not target or threaten non-nuclear-weapon states; and
- agreeing that, as Presidents Ronald Reagan and Mikhail Gorbachev did in 1985, “a nuclear war cannot be won and must never be fought”.

Obviously, the new Treaty on the Prohibition of Nuclear Weapons will not reduce the nuclear danger overnight, but it has already changed the conversation. As Martin Luther King said, “The arc of history is long, but it bends toward justice”. Clearly, history doesn’t bend toward justice on its own, and not quickly enough. The TPNW is going to bend history in the direction that all nations say they want, which is the eventual elimination of nuclear weapons.

‘There appears to be a presumption that upon Scottish Independence, the Trident submarine fleet and its incredibly destructive WMDs must simply be handed over to Westminster by Holyrood. That is wrong in international law; if the weapons remain on the territory of Scotland, a sovereign state, it will be for the Scottish Government to dispose of them as it chooses.

The principle is well established and there is a directly relevant and recent precedent in the nuclear weapons in Ukraine. Following the collapse of the Soviet Union, the highly mobile tactical nuclear weapons were swiftly taken back to Russia but the Trident comparators, the strategic nuclear weapons with their silos and the Tupolev strategic bomber fleet and its weapons, were destroyed, many inside Ukraine itself, following the Budapest Agreement of 1994 between the US, UK, Russia and Ukraine and separate bilateral agreements between Ukraine and France, and Ukraine and China.’

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Changing Europe's Calculations

*Beatrice Fihn
and Daniel Högsta*

Beatrice Fihn is Executive Director of the International Campaign to Abolish Nuclear Weapons (ICAN). Daniel Högsta is ICAN's Campaign Coordinator.

On 22 January 2021, nuclear weapons were placed in the same category as chemical and biological weapons – the other weapons of mass destruction – illegal under international law. On that date, the Treaty on the Prohibition of Nuclear Weapons (TPNW) entered into force and will change the legal and normative landscape around nuclear weapons. This has significant implications for any European governments complicit in the practice of deployment and potential use of nuclear weapons of mass destruction.

A historic milestone for nuclear disarmament

According to experts such as the *Bulletin of Atomic Scientists*, the United Nations Secretary-General, and numerous scientists, academics, and parliamentarians, the risk of nuclear weapons use is increasing. There is no doubt that any use of nuclear weapons would lead to catastrophic harm. The risk is rising in part because of technological modernisation programmes by all the nuclear-armed states and an increasing reliance on weapons of mass destruction by NATO states and nuclear allied states.

The growing international objections to this dangerous trend have been evident in the groundswell of support for the Treaty on the Prohibition of Nuclear Weapons (TPNW). With its 50th state ratification, the TPNW reached the minimum requirements for becoming international law. In response, the United Nations Secretary-General Antonio Guterres called the treaty “a meaningful commitment towards the total elimination of nuclear weapons”, and said he looked forward to helping to facilitate

the treaty's progress towards this goal. Peter Maurer, President of the International Committee of the Red Cross (ICRC), called it a "historic moment" and "a victory for humanity", which allows us to envision a future without nuclear weapons as "an actual achievable goal".

Impact on Europe

On 22 January 2021, states parties' obligations under the treaty were triggered. Three states in Europe — Austria, Ireland and Malta — have joined the TPNW. The fact that they find themselves in the minority in Europe is no surprise: the long-standing peer pressure from within NATO and the United States in particular to hold the line against the ban is, by now, well known. But the Treaty will have an impact on other European states — no matter if they join it or not. With its entry into force, the ban on nuclear weapons will be another step towards developing a norm against possessing nuclear weapons. It will positively influence the behaviour of states that are not party to the treaty, including the so-called 'nuclear umbrella states' (which have agreed to be protected by the nuclear weapons of nuclear-armed states), most of whom are on the European continent.

The potential classification of nuclear weapons as 'controversial weapons' by finance industry observers and investors will have implications for banks, pension funds and investment companies. The Treaty will also prompt more discussion of the prohibition of nuclear weapons in parliament, civil society and the media in states not party. Already, over 1,600 elected representatives have called on their governments to join the TPNW, as have capitals in nuclear-armed states such as Paris and Washington D.C.

As has been documented, the practice of nuclear-sharing allows the political risks from — and reputational costs of — participating in the practice of nuclear deterrence to be spread out. The result is a curious situation in which the possessors of nuclear weapons within NATO assert the legitimacy of their weapons by pointing at the obligation to 'defend their allies', while the non-nuclear weapon member states point to the need to have nuclear weapon states involved in any disarmament process — essentially giving the nuclear weapons states the right to veto how and when any such process should start. The TPNW exposes these states for what they are at the moment: complicit in the legitimation of the most destructive and inhumane weapon ever invented — and standing ready to participate in the annihilation of cities and mass murder of civilians. In the states that host US nuclear weapons — Belgium, Germany, Italy, The

Netherlands, and Turkey — the decision to accept these weapons of mass destruction onto their territory was never put to a vote, and for a long time was never publicly acknowledged by their governments. In the other nuclear umbrella states, the public has been told precious little of exactly how their countries will be involved in any decision to use nuclear weapons. Meanwhile, many of these same states pride themselves on being defenders of humanitarian law and democracy. The TPNW is making this double standard very hard to maintain.

Growing European support for the TPNW

Public opinion and growing political support for the TPNW is starting to show that the current European government support for nuclear weapons won't be maintained forever. A similar and ultimately futile effort by the United States to keep NATO allies in line behind the use of cluster bombs was known to have taken place during the process leading to the Convention on Cluster Munitions (CCM). In September 2020, 56 ex-presidents and -ministers from 22 nuclear weapons-implicated states signed an open letter calling on the current leaders of their governments to join the TPNW. 46 of them were from Europe, including two former secretaries-general of NATO. The Belgian government's new coalition agreement marks the first instance a NATO government has positively recognised the TPNW. And while discontent around nuclear sharing has long been bubbling in Germany around nuclear weapons, the SPD's Rolf Mützenich caused a stir year when he voiced his opposition to extending the stationing of US nuclear weapons at Büchel air base. More recently, the Green Party – who are strong contenders to join the next government – included a clear commitment to getting Germany to join the TPNW in their party platform for the 2021 elections.

These gains are modest, but they are significant and will grow over time. With major elections in several European NATO states in 2021, the TPNW is guaranteed to continue to be an issue in building coalition governments. Public opinion polls show support for the TPNW across Europe: 79% of Swedes, 78% of Norwegians, 84% of Finns, 70% of Italians, 68% of Germans, 67% of French, and 64% of Belgians support their governments joining the treaty, along with 75% of Japanese.

There's a right way and a wrong way to react to the momentum of the TPNW. The nuclear-armed states, led by the United States, are conducting a master class in doing it wrong. European NATO allies must do better if they want to be on the right side of history.

What European governments should do next

So what can European governments do? In the spirit of the Belgian government declaration, they should look to how to use the TPNW to advance nuclear disarmament:

- At the NPT Review Conference in 2021, they should acknowledge that the TPNW is an important development for nuclear disarmament as an implementation of NPT's Article 6, as well as reinforcing the non-proliferation pillar.
- Governments should be transparent about their involvement with nuclear weapons and identify ways in which they are in contravention of the norms embodied by the TPNW. Formal reviews should be conducted which explore the steps that would need to be taken in order to join the TPNW.
- The TPNW's first meeting of states parties will take place within 12 months of entry-into-force. While undertaking the aforementioned review, nuclear weapons-possessing states should constructively participate in the MSP as observers, with a view to joining the Treaty in the future.
- The TPNW continues the tradition of other weapons treaties like the CCM and the Anti-personnel Mine Ban Convention by containing positive obligations on Victim Assistance and Environmental Remediation. States unable to join the TPNW at the moment should, as a minimum, contribute to victim assistance and environmental remediation programmes to help the communities that continue to suffer from the devastating impacts of nuclear weapons testing. The nuclear-armed states and their allies have a special responsibility in this respect.

For all the talk of NATO being a 'nuclear alliance for as long as nuclear weapons exist', this is a question of policy rather than a legal obligation under the alliance's founding treaty. And while the TPNW's existence in international law will be constant, policy on nuclear weapons in individual European states, and even in the alliance itself, has and will continue to fluctuate over time.

The risk of nuclear weapons use is growing, in particular, due to emerging technologies that will have a profound impact on warfare in the future, from cyberattacks to artificial intelligence. It is naive and irresponsible to think that European states can maintain their support for the continued existence and deployment of such profoundly dangerous weapons, on the assumptions that deterrence will last forever and no mistakes will ever be made. Their publics do not believe them, and are demanding change.

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Treaty on the Prohibition of Nuclear Weapons

The States Parties to this Treaty,

Determined to contribute to the realization of the purposes and principles of the Charter of the United Nations,

Deeply concerned about the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to completely eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances,

Mindful of the risks posed by the continued existence of nuclear weapons, including from any nuclear-weapon detonation by accident, miscalculation or design, and emphasizing that these risks concern the security of all humanity, and that all States share the responsibility to prevent any use of nuclear weapons,

Cognizant that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls, including as a result of ionizing radiation,

Acknowledging the ethical imperatives for nuclear disarmament and the urgency of achieving and maintaining a nuclear-weapon-free world, which is a global public good of the highest order, serving both national and collective security interests,

Mindful of the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons,

Recognizing the disproportionate impact of nuclear-weapon activities on indigenous peoples,

Reaffirming the need for all States at all times to comply with applicable international law, including international humanitarian law and international human rights law,

Basing themselves on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, the rule of distinction, the prohibition against indiscriminate attacks, the rules on proportionality and precautions in attack, the prohibition on the use of weapons of a nature to cause superfluous injury or unnecessary suffering, and the rules for the protection of the natural environment,

Considering that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law,

Reaffirming that any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience,

Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

Recalling also the first resolution of the General Assembly of the United Nations, adopted on 24 January 1946, and subsequent resolutions which call for the elimination of nuclear weapons,

Concerned by the slow pace of nuclear disarmament, the continued reliance on nuclear weapons in military and security concepts, doctrines and policies, and the waste of economic and human resources on programmes for the production, maintenance and modernization of nuclear weapons,

Recognizing that a legally binding prohibition of nuclear weapons constitutes an important contribution towards the achievement and maintenance of a world free of nuclear weapons, including the irreversible, verifiable and transparent elimination of nuclear weapons, and determined to act towards that end,

Determined to act with a view to achieving effective progress towards

general and complete disarmament under strict and effective international control,

Reaffirming that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control,

Reaffirming also that the full and effective implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, which serves as the cornerstone of the nuclear disarmament and non-proliferation regime, has a vital role to play in promoting international peace and security,

Recognizing the vital importance of the Comprehensive Nuclear-Test-Ban Treaty and its verification regime as a core element of the nuclear disarmament and non-proliferation regime,

Reaffirming the conviction that the establishment of the internationally recognized nuclear-weapon-free zones on the basis of arrangements freely arrived at among the States of the region concerned enhances global and regional peace and security, strengthens the nuclear non-proliferation regime and contributes towards realizing the objective of nuclear disarmament,

Emphasizing that nothing in this Treaty shall be interpreted as affecting the inalienable right of its States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination,

Recognizing that the equal, full and effective participation of both women and men is an essential factor for the promotion and attainment of sustainable peace and security, and committed to supporting and strengthening the effective participation of women in nuclear disarmament,

Recognizing also the importance of peace and disarmament education in all its aspects and of raising awareness of the risks and consequences of nuclear weapons for current and future generations, and committed to the dissemination of the principles and norms of this Treaty,

Stressing the role of public conscience in the furthering of the principles of humanity as evidenced by the call for the total elimination of nuclear

weapons, and recognizing the efforts to that end undertaken by the United Nations, the International Red Cross and Red Crescent Movement, other international and regional organizations, non-governmental organizations, religious leaders, parliamentarians, academics and the hibakusha,

Have agreed as follows:

Article 1: Prohibitions

1. Each State Party undertakes never under any circumstances to:
 - (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
 - (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
 - (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
 - (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
 - (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
 - (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;
 - (g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.

Article 2: Declarations

1. Each State Party shall submit to the Secretary-General of the United Nations, not later than 30 days after this Treaty enters into force for that State Party, a declaration in which it shall:
 - (a) Declare whether it owned, possessed or controlled nuclear weapons or nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities, prior to the entry into force of this Treaty for that State Party;
 - (b) Notwithstanding Article 1 (a), declare whether it owns, possesses or controls any nuclear weapons or other nuclear explosive devices;
 - (c) Notwithstanding Article 1 (g), declare whether there are any nuclear weapons or other nuclear explosive devices in its territory or in any place under its jurisdiction or control that are owned, possessed or controlled by another State.

2. The Secretary-General of the United Nations shall transmit all such declarations received to the States Parties.

Article 3: Safeguards

1. Each State Party to which Article 4, paragraph 1 or 2, does not apply shall, at a minimum, maintain its International Atomic Energy Agency safeguards obligations in force at the time of entry into force of this Treaty, without prejudice to any additional relevant instruments that it may adopt in the future.

2. Each State Party to which Article 4, paragraph 1 or 2, does not apply that has not yet done so shall conclude with the International Atomic Energy Agency and bring into force a comprehensive safeguards agreement (INFCIRC/153 (Corrected)). Negotiation of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party. Each State Party shall thereafter maintain such obligations, without prejudice to any additional relevant instruments that it may adopt in the future.

Article 4: Towards the total elimination of nuclear weapons

1. Each State Party that after 7 July 2017 owned, possessed or controlled nuclear weapons or other nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear- weapons-related facilities, prior to the entry into force of this Treaty for it, shall cooperate with the competent international authority designated pursuant to paragraph 6 of this Article for the purpose of verifying the irreversible elimination of its nuclear-weapon programme. The competent international authority shall report to the States Parties. Such a State Party shall conclude a safeguards agreement with the International Atomic Energy Agency sufficient to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in that State Party as a whole. Negotiation of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party. That State Party shall thereafter, at a minimum, maintain these safeguards obligations, without prejudice to any additional relevant instruments that it may adopt in the future.

2. Notwithstanding Article 1 (a), 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, in accordance with a legally binding, time-bound plan for the verified and irreversible elimination of that State Party's nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities. The State Party, no later than 60 days after the entry into force of this Treaty for that State Party, shall submit this plan to the States Parties or to a competent international authority designated by the States Parties. The plan shall then be negotiated with the competent international authority, which shall submit it to the subsequent meeting of States Parties or review conference, whichever comes first, for approval in accordance with its rules of procedure.

3. A State Party to which paragraph 2 above applies shall conclude a safeguards agreement with the International Atomic Energy Agency sufficient to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in the State as a whole. Negotiation of such agreement shall commence no later than the date upon which implementation of the plan referred to in paragraph 2 is completed. The agreement shall enter into force no later than 18 months after the date of initiation of negotiations. That State Party shall thereafter, at a minimum, maintain these safeguards obligations, without prejudice to any additional relevant instruments that it may adopt in the future. Following the entry into force of the agreement referred to in this paragraph, the State Party shall submit to the Secretary-General of the United Nations a final declaration that it has fulfilled its obligations under this Article.

4. Notwithstanding Article 1 (b) and (g), each State Party that has any nuclear weapons or other nuclear explosive devices in its territory or in any place under its jurisdiction or control that are owned, possessed or controlled by another State shall ensure the prompt removal of such weapons, as soon as possible but not later than a deadline to be determined by the first meeting of States Parties. Upon the removal of such weapons or other explosive devices, that State Party shall submit to the Secretary-General of the United Nations a declaration that it has fulfilled its obligations under this Article.

5. Each State Party to which this Article applies shall submit a report to each meeting of States Parties and each review conference on the progress made towards the implementation of its obligations under this Article, until such time as they are fulfilled.

6. The States Parties shall designate a competent international authority or authorities to negotiate and verify the irreversible elimination of nuclear-weapons programmes, including the elimination or irreversible conversion of all nuclear- weapons-related facilities in accordance with paragraphs 1, 2 and 3 of this Article. In the event that such a designation has not been made prior to the entry into force of this Treaty for a State Party to which paragraph 1 or 2 of this Article applies, the Secretary-General of the United Nations shall convene an extraordinary meeting of States Parties to take any decisions that may be required.

Article 5: National implementation

1. Each State Party shall adopt the necessary measures to implement its obligations under this Treaty.

2. Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Treaty undertaken by persons or on territory under its jurisdiction or control.

Article 6: Victim assistance and environmental remediation

1. Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.

2. Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated.

3. The obligations under paragraphs 1 and 2 above shall be without prejudice to the duties and obligations of any other States under international law or bilateral agreements.

Article 7: International cooperation and assistance

1. Each State Party shall cooperate with other States Parties to facilitate the implementation of this Treaty.
2. In fulfilling its obligations under this Treaty, each State Party shall have the right to seek and receive assistance, where feasible, from other States Parties.
3. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by nuclear-weapons use or testing, to further the implementation of this Treaty.
4. Each State Party in a position to do so shall provide assistance for the victims of the use or testing of nuclear weapons or other nuclear explosive devices.
5. Assistance under this Article may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, non-governmental organizations or institutions, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, or national Red Cross and Red Crescent Societies, or on a bilateral basis.
6. Without prejudice to any other duty or obligation that it may have under international law, a State Party that has used or tested nuclear weapons or any other nuclear explosive devices shall have a responsibility to provide adequate assistance to affected States Parties, for the purpose of victim assistance and environmental remediation.

Article 8: Meeting of States Parties

1. The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Treaty, in accordance with its relevant provisions, and on further measures for nuclear disarmament, including:
 - (a) The implementation and status of this Treaty;
 - (b) Measures for the verified, time-bound and irreversible elimination of nuclear-weapon programmes, including additional protocols to this Treaty;
 - (c) Any other matters pursuant to and consistent with the provisions of this Treaty.

2. The first meeting of States Parties shall be convened by the Secretary-General of the United Nations within one year of the entry into force of this Treaty. Further meetings of States Parties shall be convened by the Secretary-General of the United Nations on a biennial basis, unless otherwise agreed by the States Parties. The meeting of States Parties shall adopt its rules of procedure at its first session. Pending their adoption, the rules of procedure of the United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, shall apply.

3. Extraordinary meetings of States Parties shall be convened, as may be deemed necessary, by the Secretary-General of the United Nations, at the written request of any State Party provided that this request is supported by at least one third of the States Parties.

4. After a period of five years following the entry into force of this Treaty, the Secretary-General of the United Nations shall convene a conference to review the operation of the Treaty and the progress in achieving the purposes of the Treaty. The Secretary-General of the United Nations shall convene further review conferences at intervals of six years with the same objective, unless otherwise agreed by the States Parties.

5. States not party to this Treaty, as well as the relevant entities of the United Nations system, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations, shall be invited to attend the meetings of States Parties and the review conferences as observers.

Article 9: Costs

1. The costs of the meetings of States Parties, the review conferences and the extraordinary meetings of States Parties shall be borne by the States Parties and States not party to this Treaty participating therein as observers, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations in the circulation of declarations under Article 2, reports under Article 4 and proposed amendments under Article 10 of this Treaty shall be borne by the

States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

3. The cost related to the implementation of verification measures required under Article 4 as well as the costs related to the destruction of nuclear weapons or other nuclear explosive devices, and the elimination of nuclear-weapon programmes, including the elimination or conversion of all nuclear-weapons-related facilities, should be borne by the States Parties to which they apply.

Article 10: Amendments

1. At any time after the entry into force of this Treaty, any State Party may propose amendments to the Treaty. The text of a proposed amendment shall be communicated to the Secretary-General of the United Nations, who shall circulate it to all States Parties and shall seek their views on whether to consider the proposal. If a majority of the States Parties notify the Secretary-General of the United Nations no later than 90 days after its circulation that they support further consideration of the proposal, the proposal shall be considered at the next meeting of States Parties or review conference, whichever comes first.

2. A meeting of States Parties or a review conference may agree upon amendments which shall be adopted by a positive vote of a majority of two thirds of the States Parties. The Depositary shall communicate any adopted amendment to all States Parties.

3. The amendment shall enter into force for each State Party that deposits its instrument of ratification or acceptance of the amendment 90 days following the deposit of such instruments of ratification or acceptance by a majority of the States Parties at the time of adoption. Thereafter, it shall enter into force for any other State Party 90 days following the deposit of its instrument of ratification or acceptance of the amendment.

Article 11: Settlement of disputes

1. When a dispute arises between two or more States Parties relating to the interpretation or application of this Treaty, the parties concerned shall consult together with a view to the settlement of the dispute by negotiation or by other peaceful means of the parties' choice in accordance with Article 33 of the Charter of the United Nations.

2. The meeting of States Parties may contribute to the settlement of the

dispute, including by offering its good offices, calling upon the States Parties concerned to start the settlement procedure of their choice and recommending a time limit for any agreed procedure, in accordance with the relevant provisions of this Treaty and the Charter of the United Nations.

Article 12: Universality

Each State Party shall encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty.

Article 13: Signature

This Treaty shall be open for signature to all States at United Nations Headquarters in New York as from 20 September 2017.

Article 14: Ratification, acceptance, approval or accession

This Treaty shall be subject to ratification, acceptance or approval by signatory States. The Treaty shall be open for accession.

Article 15: Entry into force

1. This Treaty shall enter into force 90 days after the fiftieth instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, this Treaty shall enter into force 90 days after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 16: Reservations

The Articles of this Treaty shall not be subject to reservations.

Article 17: Duration and withdrawal

1. This Treaty shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of the Treaty have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to the

Depositary. Such notice shall include a statement of the extraordinary events that it regards as having jeopardized its supreme interests.

3. Such withdrawal shall only take effect 12 months after the date of the receipt of the notification of withdrawal by the Depositary. If, however, on the expiry of that 12-month period, the withdrawing State Party is a party to an armed conflict, the State Party shall continue to be bound by the obligations of this Treaty and of any additional protocols until it is no longer party to an armed conflict.

Article 18: Relationship with other agreements

The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the Treaty.

Article 19: Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Treaty.

Article 20: Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Treaty shall be equally authentic.

DONE at New York, this seventh day of July, two thousand and seventeen.

* * *

Ratification Statements

Ireland

Statement by Minister Coveney on the 50th Ratification of the Treaty on the Prohibition of Nuclear Weapons

I am pleased that the 50th instrument of ratification of the Treaty on the Prohibition of Nuclear Weapons was deposited yesterday, meaning the Treaty will enter into force on 22 January 2021. At a time of rising international tensions, and as we see renewed concerns about nuclear weapons proliferation, a renewed arms race and the destabilising effects of technological developments, the support for the Treaty is a clear indication of the will of the majority of countries to add fresh momentum to achieve

the goal of a world free of nuclear weapons. The significance of the Treaty lies in the fact that for the first time, the core objective of the prohibition of nuclear weapons will be clearly and unambiguously stated in an international Treaty. It challenges us to think about the enormity of the threat posed by these weapons, and by stigmatizing and prohibiting nuclear weapons, it makes a statement that these weapons are no longer acceptable. I am pleased that Ireland ratified the Treaty earlier this year, on the 75th anniversary of the bombing of Hiroshima, continuing our long history of leadership in nuclear disarmament. On this occasion, I pay particular tribute to all victims and survivors of nuclear weapons use and nuclear weapons testing. We owe a debt of gratitude to the survivors who have spent decades campaigning for the elimination of nuclear weapons.

South Africa

South Africa welcomes the 50th ratification on 24 October 2020 of the UN Treaty on the Prohibition of Nuclear Weapons (TPNW) allowing it to enter into force. The seminal Treaty was adopted by United Nations member states on 07 July 2017 and South Africa signed the Treaty at a signing ceremony held on the margins of the 72nd Session of the United Nations General Assembly in September 2017 and ratified it on 25 February 2019.

The Treaty prohibits all signatory countries from developing, testing, producing, manufacturing, transferring, possessing, stockpiling, using or threatening to use nuclear weapons, or allowing nuclear weapons to be stationed on their territory. It also prohibits them from assisting, encouraging or inducing anyone to engage in any of these activities.

Welcoming the final step for the Treaty to come into force, International Relations and Cooperation Minister, Naledi Pandor stated ... ‘South Africa is honoured, as the first country to have voluntarily eliminated all its nuclear weapons, to have played a leading role, together with several UN member states and members of civil society in ensuring that the Treaty is agreed upon and now finally ratified. The Treaty exemplifies the central goal of the United Nations, which according to the UN Charter is to “save succeeding generations from the scourge of war’. The Minister concluded, ‘Our collective goal must remain to achieve a world free of nuclear weapons. In this regard, South Africa, working with others who maintain the same goal, will continue our efforts to ensure the complete elimination of all weapons of mass destruction’.

The Treaty complements other international instruments by contributing towards fulfilling the nuclear disarmament obligations under the Nuclear Non-Proliferation Treaty (NPT), the objectives of the Comprehensive

Nuclear Test-Ban Treaty (CTBT) and the various nuclear-weapon-free-zone treaties, such as the Pelindaba Treaty that already banned nuclear weapons in Africa.

Austria

‘The rapid entry into force of this central prohibition standard, only three years after I signed the treaty for Austria in New York, is also a success of our close cooperation with friendly states, the Red Cross and civil society. It is appalling that 75 years after the atomic bombs dropped on Hiroshima and Nagasaki, with their devastating humanitarian consequences, we are still not safe from these despicable weapons. With the entry into force of the Treaty on the Prohibition of Nuclear Weapons, we are making it very clear that we do not accept a standstill in nuclear disarmament and that nuclear deterrence does not create security. It is high time to finally put an end to this myth’, stressed Foreign Minister Schallenberg.

The Treaty on the Prohibition of Nuclear Weapons reached the 50 ratifications necessary for its entry into force yesterday, Saturday – just on the 75th anniversary of the United Nations. The treaty will enter into force 90 days later. The Treaty on the Prohibition of Nuclear Weapons was negotiated on Austria’s initiative: 122 UN member states approved the text of the treaty on 7 July 2017, and therefore clearly opposed the rearmament programmes of nuclear-armed states – programmes which cost billions of euros.

‘In times of rising geopolitical tensions and the modernisation of arsenals, the entry into force of this treaty is a clear signal that disarmament commitments can no longer remain hollow words and that the risks and permanent threat posed by these weapons of mass destruction are unacceptable – and finally illegal, too’, explained a convinced Federal Chancellor Kurz and Foreign Minister Schallenberg.

The adoption of the prohibition treaty was preceded by three conferences on the humanitarian consequences of nuclear weapons in close cooperation with the Red Cross and civil society. At the end of the Vienna Conference in 2014, Austria announced the drafting of a ban. This initiative was joined by 127 states, whereupon work began on drafting the treaty. As a further sign of its commitment, Austria has already proposed holding the first meeting of the signatories in Vienna at the headquarters of the United Nations. This should take place within one year of the treaty’s entry into force. ‘Until then we are calling on all governmental and non-governmental partners to join us in maintaining the pressure for further signatures and ratifications of the treaty, so we can achieve our common

goal of a world free from nuclear weapons', concluded Federal Chancellor Kurz and Foreign Minister Scahallenberg.

China

Tweet sent by the 'Chinese Mission to UN'

China has always been advocating complete prohibition and thorough destruction of nuclear weapons, which is fundamentally in line with purposes of #TPNW. China will continuously make relentless efforts towards a nuclear-weapon-free world.

Resolution 1 (I) was passed on January 24, 1946. It was the very first resolution passed by the United Nation's General Assembly

1 (I). ESTABLISHMENT OF A COMMISSION TO DEAL WITH THE PROBLEMS RAISED BY THE DISCOVERY OF ATOMIC ENERGY

Resolved by the General Assembly of the United Nations to establish a commission, with the composition and competence set out hereunder, to deal with the problems raised by the discovery of atomic energy and other related matters:

1. ESTABLISHMENT OF THE COMMISSION

A Commission is hereby established by the General Assembly with the terms of reference set out under section 5 below ...

5. TERMS OF REFERENCE OF THE COMMISSION

The Commission shall proceed with the utmost despatch and enquire into all phases of the problem, and make such recommendations from time to time with respect to them as it finds possible. In particular, the Commission shall make specific proposals:

- (a) for extending between all nations the exchange of basic scientific information for peaceful ends;
- (b) for control of atomic energy to the extent necessary to endure its use only for peaceful purposes;
- (c) for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction;
- (d) for effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions.

Disarmament

Bertrand Russell

There are many who consider that the problem of agreed disarmament or reduction of armaments is the most important in the field of international relations and the one to be first dealt with. I do not share this view. Needless to say, I consider agreed reduction of armaments very important and I favour the complete prohibition of all nuclear weapons, whether strategic or tactical. I see, however, two objections to treating this as the central and primary problem: First, as the experience of the last thirteen years has shown, disarmament conferences cannot reach agreements until the relations of East and West become less strained than they have been; second, the long-run problem of saving mankind from nuclear extinction will only be postponed, not solved, by agreements to renounce nuclear weapons. Such agreements will not, of themselves, prevent war, and, if a serious war should break out, neither side would consider itself bound by former agreements, and each side would, in all likelihood, set to work to manufacture new H-bombs as quickly as possible. These two considerations belong to different ends of the long road towards secure peace. The first prevents nations from starting along the road; the second shows a possibility of their being deflected after travelling a long way towards the goal. For these reasons, I should regard agreed disarmament as a palliative rather than a solution.

Nevertheless, the importance of any agreed measure of disarmament would be very great indeed. Perhaps its first and greatest importance would consist in the proof that negotiations between East and West can bear fruit in measures that all sane men must welcome. The second gain would be a diminution of the risk of unintended war.

An extract from Bertrand Russell's 1959 book, Common Sense and Nuclear Warfare.

The present readiness for instant retaliation makes it possible for some wholly accidental misfortune, such as a meteor exploding an H-bomb, to be mistaken for enemy action. Since it is assumed, probably rightly, that a Great Power, if embarked upon nuclear war, would begin by destroying the seat of government of the enemy, it is inferred that subordinate commanders must not wait for orders from headquarters but must carry out plans previously arranged to meet the emergency. Many things more probable than collision with a meteor might initiate a war that no Great Power had intended. One such cause would be a mechanical defect in radar. Another would be a sudden nervous breakdown of some important officer as a result of the stress caused by appalling responsibility. A third, and even more likely source of danger, will arise when many countries have nuclear weapons. It will then be possible for a small country with an irresponsible, chauvinistic Government, to make a nuclear attack which would be interpreted as coming from a major Power and would, therefore, lead to world war before the error was discovered. For such reasons, the present state of the world, and still more the state which will exist when, as now seems nearly certain, a great many States possess H-bombs, involves quite appalling dangers which could be very greatly lessened by disarmament agreements.

A third reason for desiring a reduction of armaments is economy. The importance of this reason is likely to increase and become more evident during the next few years. Western Governments, faced by fear of mounting expenditure, have recently adopted the view that nuclear weapons almost alone could afford adequate defence. This view is being increasingly challenged by experts on the ground that the United States could suffer unendurably from a nuclear attack and would, therefore, be very unwilling to provoke a nuclear war. It follows that, if the West is to be capable of resisting the East without disaster, it must be able to conduct non-nuclear wars, although the ability to do so involves enormously increased expenditure. Apart from this somewhat technical consideration, one must assume that, so long as the arms race continues and remains a matter of life and death to both sides, new inventions will constantly increase military expenditure until both sides are reduced to subsistence level. The only escape will be when both sides realize that it is more profitable to keep one's own citizens prosperous than to be able to kill those of other countries.

The fourth gain which may be secured by disarmament agreement is that they may show the necessity of deciding disputes by arbitration or by some international tribunal, rather than by war or the threat of war. This is an almost inevitable logical consequence of any such agreement. Decision by war implies the use of the whole of a nation's strength if that is necessary for victory. A disarmament agreement on the other hand, so long as it is

respected, implies that the Government is not using its whole strength in preparation for war. This leads inevitably to the conclusion that new methods of settling disputes must be sought. Granted that a reduction of armaments is desirable, we are faced at once by formidable problems. After studying the proceedings of disarmament conferences, it is almost impossible not to be lost in a morass of technicalities, with arguments this way and that and well-founded objections that are met by equally well-founded retorts. So long as the East-West tension remains what it has been, I do not think that we are likely to escape from this morass. Suppose the East offers to agree to the abolition of all nuclear weapons. The West at once retorts that the superior man-power of the East would give it an unfair advantage unless conventional armaments were reduced at the same time. Suppose this admitted. The next question that arises is: To what figure should the conventional armaments of East and West be reduced? Suppose this agreed, there arises a third and most difficult question: What enduring measures of inspection will insure that an agreement is being loyally carried out? Hitherto it has been found that such questions could be prolonged *ad infinitum* and that negotiators could continue throughout many years to advocate disarmament without incurring the risk of bringing it about. If disarmament negotiations are to succeed, it will only be when each side is persuaded that the other has abandoned the hope of conquest.

There is, it is true, one measure which is already within the sphere of practical politics, and that is the abolition of nuclear tests. What makes this measure already possible is that scientists are agreed in believing that no serious nuclear test can be concealed, given a system of inspection so little onerous that neither side objects to it. Although the stoppage of tests is only a small step, it will nevertheless be very welcome if it takes place. It will be welcome, first, because it will put an end to the increase of radioactive substances in air and water and food which at present is causing an increase of cancer and leukaemia and genetic damage of unknown magnitude. It will be welcome, in the second place, because any agreement between East and West is to the good and tends to diminish tension. It will be welcome, in the third place, because it will make it more difficult for new Powers to join the 'Nuclear Club'. For these reasons, we must all ardently hope that an agreement to abolish tests will be reached.

Apart from the absence of any genuine governmental desire for disarmament, the greatest difficulties are connected with the question of inspection. On this subject there is an admirable book: *Inspection for Disarmament*, edited by Seymour Melman, and published by the Columbia University Press, New York, in 1958. So far as I am able to judge, the investigations contained in this book are completely honest and aim solely at

a just estimate of facts and probabilities. Broadly speaking, the conclusion reached in this book is that inspection could prevent the manufacture of new nuclear weapons, but that it probably could not prevent a dishonest Government from concealing some part of the stocks existing at the time when an agreement was concluded. There is a valuable account of the devices by which the German Government, after the First World War, concealed the armaments which it created in defiance of the Treaty of Versailles. In this case, the acquiescence of the German Government in the disarmament clauses of that Treaty was not voluntary, but was only a reluctant acquiescence in the consequences of defeat. I think we may infer that no disarmament agreement will be reliable unless all signatory States are sincerely convinced that it is to their own advantage, and not only to that of potential enemies. This re-enforces our earlier contention that disarmament must result from better relations between East and West, and cannot, by itself, be a cause of such better relations.

Given a genuine desire for peace on both sides, it should be possible, without undue delay, to agree that no new nuclear weapons should be manufactured. This is a measure which could be enforced by inspection without great difficulty. Aerial inspection, especially, would make the concealment of large plants almost impossible, even in the remotest regions of Siberia or Alaska. The destruction of existing stocks of H-bombs should follow, but offers greater difficulties, and, if it is to be carried out without altering the balance of power, it will have to be accompanied by a reduction of conventional forces. I doubt whether an agreement to this effect will be concluded until there is a genuine readiness on both sides to renounce war as an instrument of policy.

I should like, in conclusion, to say a few words about the increase of general well-being that would result if such measures of disarmament as we have been discussing were carried out. I put first among the gains to be expected the removal of that terrible load of fear which weighs at present upon all those who are aware of the dangers with which mankind is threatened. I believe that a great upsurge of joy would occur throughout the civilized world and that a great store of energies now turned to hate and destruction and futile rivalry would be diverted into creative channels, bringing happiness and prosperity to parts of the world which, throughout long ages, have been oppressed by poverty and excessive toil. I believe that the emotions of kindness, generosity and sympathy, which are now kept within iron fetters by the fear of what enemies may do, would acquire a new life and a new force and a new empire over human behaviour. All this is possible. It needs only that men should permit themselves a life of freedom and hope from which they are now excluded by the domination of unnecessary fear.

Challenging Nuclearism

The UN Treaty on the Prohibition of Nuclear Weapons

Richard Falk

Richard Falk is professor emeritus of international law at Princeton University and was Professor of Global Law, Queen Mary University of London. He served a six-year term as United Nations Special Rapporteur on the situation of human rights in Palestinian territories. He is the author or co-author of numerous books about global governance, human rights, and the idea of world order. He is Senior Vice President at the Nuclear Age Peace Foundation and has acted as counsel before the International Court of Justice.

On 7 July 2017, 122 countries at the UN voted to approve the text of a proposed international treaty entitled ‘Draft Treaty on the Prohibition of Nuclear Weapons.’ (TPNW) The treaty was formally opened for signature that September, but it only became a binding legal instrument according to its own provisions on January 21, 2021, which is 90 days after the 50th country deposited with the UN Secretary General its certification that the treaty has been ratified in accordance with their various constitutional processes. This is a major accomplishment, not least because all of the major nuclear weapons states refused to participate in the negotiating process, and the United States, France, and UK issued a formal statement denouncing the treaty and refusing to alter their reliance on nuclear weapons in carrying out their foreign policy

In an important sense, it is incredible that it took 76 years after the attacks on Hiroshima and Nagasaki to reach this point of setting forth an unconditional prohibition of any use or threat of nuclear weapons [Article 1(e)] within the framework of a multilateral treaty negotiated under UN auspices. The core obligation of states that choose to become parties to the treaty is very sweeping. It prohibits any connection whatsoever with the weaponry by way of possession, deployment, testing, transfer, storage, and production [Article 1(a)].

The TPNW is significant beyond the prohibition. It can and should be interpreted as a frontal rejection of the geopolitical approach to nuclearism, and its contention that the retention and development of nuclear weapons is a proven necessity for

global security given the way international society is organized. It is a healthy development that the TPNW shows an impatience toward and a distrust of the elaborate geopolitical rationalizations of the nuclear status quo that have ignored the profound objections to nuclearism of many governments and the anti-nuclear views that have long dominated world public opinion and animated civil society activists. The old reassurances of the nuclear weapons states about being committed to nuclear disarmament as soon as an opportune moment arrives increasingly lack credibility as the nuclear weapons states, led by the United States, make continuing huge investments in the modernization and further development of their nuclear arsenals, with the US even proposing to deploy nuclear weapons in space, despite the risks and expense.

Despite this justifiable sense of achievement, it must be admitted that there is a near fatal weakness, or at best, a gaping hole in this newly cast net of prohibition established by way of the TPNW process. True, 122 signatures, and even more, the formal entry into force of the treaty, lends weight to the claim that the international community, by taking such a significant stand has signalled in an obligatory way the repudiation of nuclear weapons for any and all purposes, and formalized the prohibition of any action to the contrary. The enormous fly in this healing ointment arises from the refusal of any of the nine nuclear weapons states to join in the TPNW process even to the legitimating extent of participating in the negotiating conference with the opportunity to express their objections and influence the outcome. As well, most of the chief allies of these states that are part of the global security network of states relying directly and indirectly on nuclear weaponry also boycotted the entire process. It is also discouraging to appreciate that several countries in the past that had lobbied against nuclear weapons with great passion such as India, Japan, and China were notably absent, and also opposed the prohibition. This posture of undisguised opposition to this UN sponsored undertaking to delegitimize nuclearism, while reflecting the views of a minority of governments, must be taken extremely seriously. It includes all five permanent members of the Security Council that have sophisticated nuclear weapons programs of their own, and such important international actors as Germany and Japan that have long taken shelter under the US nuclear umbrella.

The NATO triangle of France, United Kingdom, and the United States, three of the five veto powers in the Security Council, angered by its inability to prevent the whole TPNW venture, went to the extreme of issuing a Joint Statement of denunciation in 2017, the tone of which was

disclosed by its defiant assertion removing any doubt as to the abiding commitment to a nuclearized world order: ‘We do not intend to sign, ratify or ever become party to it. Therefore, there will be no change in the legal obligations on our countries with respect to nuclear weapons.’ The body of the statement contended that global security depended upon maintaining the nuclear status quo, as bolstered by the Non-proliferation Treaty (NPT) of 1968 and by the claim that it was ‘the policy of nuclear deterrence, which has been essential to keeping the peace in Europe and North Asia for over 70 years’. It is relevant to take note of the geographic limits associated with the claimed peace-maintaining benefits of nuclear weaponry, which ignores the ugly reality that devastating warfare has raged throughout this period outside the feared mutual destruction of the heartlands of geopolitical rivals, a central shared forbearance by the two nuclear superpowers throughout the entire Cold War. During these decades of rivalry, the violent dimensions of geopolitical rivalry were effectively outsourced to the non-Western regions of the world, and subsequently, causing massive suffering and widespread devastation for many vulnerable peoples inhabiting Asia, Africa, and the Middle East. Such a conclusion suggests that even if we were to accept the claim that nuclear weapons deserve credit for avoiding a major war, specifically World War III, that ‘achievement’ was accomplished at the cost of millions, probably tens of millions, of civilian lives in non-Western societies. Beyond this, the achievement involved a colossally irresponsible gamble with the human future, succeeded as much due to good luck as to the rationality attributed to deterrence theory and practice, an assessment confirmed in Martin Sherwin’s definitive historical study, *Gambling with Armageddon: Nuclear Roulette from Hiroshima to the Cuban Missile Crisis* (2020).

TPNW itself does not challenge the Westphalian framework of state-centrism by setting forth a framework of global legality that is issued under the authority of ‘the international community’ or the UN as the authoritative representative of the peoples of the world. Its provisions are carefully formulated as imposing obligation only with respect to ‘State parties,’ that is, governments that have deposited the prescribed ratification and thereby become formal adherents of the treaty. Even Article 4, which hypothetically details how nuclear weapons states should divest themselves of all connections with the weaponry limits its claims to State parties, and offers no guidance whatsoever in the event of suspected or alleged non-compliance. Reliance is placed in Article 5 on a commitment to secure compliance by way of the procedures of ‘national implementation.’

The treaty does aspire to gain eventual universality through the adherence of all states over time, but in the interim the obligations imposed are of minimal substantive relevance beyond the agreement of the non-nuclear parties not to accept deployment or other connections with the weaponry. It is for another occasion, but I believe a strong case can be made under present customary international law, emerging global law, and abiding principle of natural law that the prohibitions in the TPNW are binding universally independent of whether a state chooses or not to become a party to the treaty.

Taking an unnecessary further step to reaffirm statism, and specifically, ‘national sovereignty’ as the foundation of world order, Article 17 gives parties to the TPNW a right of withdrawal. All that state parties have to do is give notice, accompanied by a statement of ‘extraordinary circumstances’ that have ‘jeopardized the supreme interests of its country.’ The withdrawal will take effect twelve months after the notice and statement are submitted. There is no procedure in the treaty by which the contention of ‘extraordinary circumstances’ can be challenged as unreasonable or made in bad faith. It is an acknowledgement that even for these non-nuclear states adhering to the treaty, nothing in law or morality or human wellbeing takes precedence over the exercise of sovereign rights. Article 17 is not likely to be invoked in the foreseeable future. This provision reminds us of this strong residual unwillingness to supersede *national* interests by deference to *global* and *human* interests. The withdrawal option is also important because it confirms that national security continues to take precedence over international law, even with respect to genocidal weaponry of mass destruction. As such the obligation undertaken by parties to the TPNW are reversible in ways that are not present in multilateral conventions outlawing genocide, apartheid, and torture, or in *jus cogens* domains.

Given these shortcomings, is it nevertheless reasonable for nuclear abolitionists to claim a major victory by virtue of tabling such a treaty? Considering that the nuclear weapons states and their allies have all rejected the process and even those within the circle of the intended legal prohibition reserve a right of withdrawal, the TPNW is likely to be brushed aside by realists and cynics as mere wishful thinking and even by some dedicated anti-nuclearists as more of an occasion for hemlock than champagne. The cleavage between the nuclear weapons states and the rest of the world has never been starker, and there are absent any signs on either side of the divide to make the slightest effort to find common ground, and there may be none. As of now, it is a standoff between two

forms of asymmetry. The nuclear states enjoy a preponderance of hard power, while the anti-nuclear states have the upper hand when it comes to soft power, including solid roots in ‘substantive democracy,’ ‘global law,’ ‘natural law,’ and ‘global ethics.’

The hard power solution to nuclearism has essentially been reflexive, that is, relying on nuclearism as shaped by the leading nuclear weapons states. What this has meant in practice is some degree of self-restraint on the battlefield and crisis situations (there is an existential nuclear taboo without doubt, although it has never been seriously tested), and, above all, a delegitimizing one-sided implementation of the Non-proliferation Treaty regime. This one-sidedness manifests itself in two ways: (1) discriminatory administration of the underlying non-proliferation norm, most unreservedly in the case of Israel; as well, the excessive enforcement of the non-proliferation norm beyond the limits of either the NPT itself or the UN Charter, as with Iraq (2003), and currently by way of threats of military attack against North Korea and Iran. Any such uses of military force would be non-defensive and unlawful unless authorized by a Security Council resolution supported by all five permanent members, and at least four other states, which fortunately remains unlikely. [UN Charter, Article 27(3)] More likely is recourse to unilateral coercion led by the countries that issued the infamous joint declaration denouncing the TPNW as was the case for the US and the UK with regard to recourse to the war against Iraq, principally rationalized as a counter-proliferation undertaking, which turned out itself to be a rather crude pretext for mounting an aggressive war with other goals, showcasing ‘shock and awe’ tactics.

(2) The failure to respect the obligations imposed on the nuclear weapons states to negotiate in good faith an agreement to eliminate these weapons by verified and prudent means, and beyond this to seek agreement on general and complete disarmament. It should have been evident, almost 50 years after the NPT came into force in 1970 that nuclear weapons states have breached their material obligations under the treaty, which were validated by an Advisory Opinion of the International Court of Justice in 1996 that included a unanimous call for the implementation of these Article VI legal commitments. Drawing this conclusion from deeds as well as words, it is evident for all with eyes that want to see, that the nuclear weapons states as a group have opted for deterrence plus counter-proliferation as their *permanent* security regime.

One contribution of the TPNW is to convey to the world the crucial awareness of these 122 countries as reinforced by global public opinion

that the deterrence/NPT approach to global peace and security is neither prudent nor legitimate nor a credible pathway leading over time to the end of nuclearism.

In its place, the TPNW offers its own two-step approach—first, an unconditional stigmatizing of the use or threat of nuclear weapons to be followed by a negotiated process seeking nuclear disarmament. Although the TPNW is silent about demilitarizing geopolitics and conventional disarmament, it is widely assumed that latter stages of denuclearization would not be implemented unless they involved an ambitious downsizing of the war system. The TPNW is also silent about the relevance of nuclear power capabilities, which inevitably over time entail a weapons option given widely available current technological knowhow. The relevance of nuclear energy technology would have to be addressed at some stage of nuclear disarmament.

Having suggested these major shortcomings of treaty coverage and orientation, can we, should we cast aside these limitations, and join in the celebrations and renewed hopes of civil society activists to rid the world of nuclear weapons? My esteemed friend and colleague, David Krieger, who has dedicated his life to keeping the flame of discontent about nuclear weapons burning and serves as the longtime and founding President of the Nuclear Age Peace Foundation, concludes his informed critique of the Joint Statement by NATO leaders with this heartening thought: “Despite the resistance of the US, UK and France, the nuclear ban treaty marks the beginning of the end of the nuclear age.” [Krieger, “U.S., UK and France Denounce the Nuclear Ban Treaty”]. I am not at all sure about this, although Krieger’s statement leaves open the haunting uncertainty of how long it might take to move from this ‘beginning’ to the desired ‘end.’ Is it as some self-styled ‘nuclear realists’ like to point out, no more than an *ultimate* goal, which is polite coding for the outright dismissal of the nuclear disarmament option as ‘utopian’ or ‘unattainable’?

We should realize that there have been many past ‘beginnings of the end’ since 1945 that have not led us any closer to the goal of the eliminating the scourge of nuclearism from the face of the earth. It is a long and somewhat arbitrary list, including the immediate horrified reactions of world leaders to the atomic bomb attacks at the end of World War II, and what these attacks suggested about the future of warfare; the massive anti-nuclear civil disobedience campaigns that briefly grabbed mass attention in several nuclear weapons states; tabled disarmament proposals by the United States and the Soviet Union in the 1960s; the UN General Assembly Resolution 1653 (XVI) that in 1961 declared threat or use of

nuclear weapons to be unconditionally unlawful under the UN Charter and viewed any perpetrator as guilty of a crime against humanity; the Cuban Missile Crisis of 1962 that scared many at the momentary realization that it was not tolerable to coexist with nuclear weapons; the International Court of Justice majority Advisory Opinion in 1996 responding to the General Assembly's formal inquiry about the legality of nuclear weapons, limiting the possibility of legality of use to the narrow circumstance of responding to imminent threats to the survival of a sovereign state; the apparent proximity to historic disarmament arrangements agreed to by Ronald Reagan and Mikhail Gorbachev at a summit meeting in Reykjavik, Iceland in 1986; the extraordinary opening provided by the ending of the Cold War and the collapse of the Soviet Union, which offered world leaders the best possible 'beginning of the end,' and yet nothing happened; and finally, Barack Obama's Prague speech in 2009 (echoing sentiments expressed less dramatically by Jimmy Carter in 1977, also early in his presidency) in which he advocated to great acclaim dedicated efforts to advance toward the elimination of nuclear weapons if not in his lifetime, at least as soon as possible; it was a good enough beginning for a Nobel Peace Prize, but then one more fizzle, presumably discouraged by the pushback of the formidable nuclear weapons establishment.

Each of these occasions briefly raised the hopes of humanity for a future freed from a threat of nuclear war, and its assured accompanying catastrophe, and yet there was few, if any, signs of progress flowing from each of these beginnings greeted so hopefully toward the ending posited as a goal. Soon disillusionment, denial, and distraction overwhelmed the hopes raised by these earlier initiatives, with the atmosphere of hope in each instance replaced by an aura of nuclear complacency, typified by indifference, ignorance, and denial. It is important to acknowledge that the national bureaucratic and ideological *structures* supporting nuclearism are extremely resilient, and have proved adept at outwaiting and outwitting the flighty politics of periodic flurries of anti-nuclear activism.

And after a lapse of years, yet another new beginning is now being proclaimed. We need to summon and sustain greater energy than in the past if we are to avoid this fate of earlier new beginnings in relation to the TPNW. We need to do our best to let this latest beginning start a process that moves steadily toward the end that has been affirmed. We know that the TPNW would not itself have moved forward without civil society militancy and perseverance at every stage. The challenge now is to discern and then take the next steps, and not follow the precedents of the past that followed the celebration of a seeming promising beginning with a

misplaced reliance on the powers that be to handle the situation, and act accordingly. In the past, the earlier beginnings were soon buried, acute concerns eventually resurfaced, and yet another new beginning was announced with fanfare while the earlier failed beginnings were purged from collective memory.

Here, we can at least thank the Joint Statement of leading NATO allies for sending a clear signal to civil society and the 122 governments voting their approval of the TPNW text that if they are truly serious about ending nuclearism, they will have to carry on the political fight, gathering further momentum, and seeking to reach tipping points where these beginnings of the end start to gain enough traction to become a genuine political project, and not just another harmless daydream or well-intended, soon to be forgotten empty gesture.

As of now the TPNW is a treaty text that courteously mandates the end of nuclearism, but to convert this text into an effective regime of control will require the kind of deep commitments, sacrifices, and perseverance that eventually achieved the impossible, recalling the movements that ending such entrenched evils as slavery, apartheid, and colonialism, but only after long struggles.

