Treaty on the prohibition of nuclear weapons – First meeting of States Parties

SUMMARY

From 21 to 23 June 2022, the 61 States Parties to the Treaty on the Prohibition of Nuclear Weapons (TPNW) will meet for the first time. Russia's threat to use nuclear weapons in the context of its war on Ukraine has given new relevance – and some will argue urgency – to the initiative launched a decade ago to prohibit nuclear weapons. The TPNW entered into force on 22 January 2021. On that day, nuclear weapons development, testing, production, possession, stockpiling, use and threat of use, as well as the stationing or deployment of another country's nuclear weapons on a state party's national territory became prohibited under international law.

The TPNW has been hailed as historic by supporters of the initiative, which has gained ground in recent years, to rid the world of the most destructive weapon known to humankind. The International Campaign to Abolish Nuclear Weapons (ICAN), which spearheaded these efforts, was awarded the 2017 Nobel Peace Prize. Supporters hope that the TPNW will strengthen the international legal framework and gradually advance the political norm against possession and use of nuclear weapons. However, opponents of the Treaty argue that the conditions for disarmament do not currently exist and that promoters of the TPNW fail to recognise this. Arguably, their position has been strengthened by recent developments. The nine states known to have military nuclear programmes have not signed the TPNW. Nor have Member States of the North Atlantic Treaty Organization (NATO), which re-confirmed its commitment to nuclear deterrence in 2016. This raises doubts about the impact of this new instrument and its ability to create normative values. Most EU Member States, 21 of which are members of NATO, oppose the TPNW, and only three have ratified it. The European Parliament has noted that the TPNW provided evidence of the desire to achieve the objective of a nuclear weapons-free world.

This is an updated version of an earlier briefing, from January 2021.

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Nuclear weapons threat at an all-time high

The first meeting of the States Parties to the Treaty on the Prohibition of Nuclear Weapons (TPNW) is taking place at a time when the use of nuclear weapons has become a distinct possibility. According to experts, the potential for the use of nuclear weapons has not been so real since the Cuban Missile Crisis in 1962, the closest the United States and the Soviet Union came to nuclear conflict during the Cold War. The Russian leadership has repeatedly threatened to use nuclear weapons in the context of its military aggression on Ukraine, which started on 24 February 2022. This threat has been directed, in particular, at third countries considering assisting Ukraine, and has contributed substantially to NATO’s reluctance to respond.

Even before Russia launched its invasion of Ukraine, tensions among nuclear-armed states had reached dangerous levels – such as between Russia and the United States of America (USA), the United Kingdom (UK) and France, between the USA and China, and between India and Pakistan – leading experts to speak about ‘outright strategic rivalry and competition’. Moreover, experts are concerned that the ‘fabric of international institutions, treaties, and norms that has historically contributed to predictable and more stable relationships among nuclear-armed States is deteriorating’. They also point to technological developments that heighten uncertainties and unpredictability in the strategic relationships among nuclear-armed States. In January 2021, the Science and Security Board of the Bulletin of the Atomic Scientists set the Doomsday clock to 100 seconds to midnight (the closest it has ever been) and warned that the world is ‘sleepwalking its way through a newly unstable nuclear landscape’.

Russia’s nuclear threat has a very significant impact on the way the world views nuclear weapons. Nuclear weapons are no longer on the minds of experts alone, but have also caught the attention of politicians and citizens worldwide. In a resolution adopted on 2 March 2022 condemning the Russian aggression against Ukraine, the United Nations General Assembly (UNGA) also condemned the Russian Federation’s decision to increase the readiness of its nuclear forces.

Coupled with the growing importance that nuclear weapon states attach to their nuclear weapons, experts believe that recent developments are likely to make efforts to reduce the number of nuclear weapons and stop their proliferation much harder. While proponents of the TPNW consider that banning nuclear weapons altogether is the best solution to address the dangers they pose, experts predict that support for the TPNW is likely to wane in the current climate, especially in Europe. According to a survey conducted in 2019, public opinion in Belgium, Germany, Italy and the Netherlands was overwhelmingly in favour of signing the TPNW. While more recent figures on attitudes towards the TPNW are not available, recent surveys have nevertheless shown that the Russian invasion has increased support for NATO – a nuclear alliance – across Europe.

The first meeting of the States Parties to the TPNW

Article 8, paragraph 2, of the TPNW specifies that ‘the first meeting of States Parties shall be convened ... within one year of the entry into force of this Treaty’. Originally scheduled to take place in January 2022, States Parties postponed their first meeting to 21-23 June 2022, due to the coronavirus pandemic. The Secretary-General of the United Nations, who will convene the meeting in Vienna, has invited states not party to the TPNW to attend the meeting as observers.

Organisers see the meeting as a ‘key opportunity to set the treaty on the right track’. States Parties have been very clear that they want a message of the ‘seriousness’ of this new treaty to emerge from their first meeting. States parties recognise that there are important decisions to take, both on substantive issues and on procedural questions, and a lot of effort has been put into the thorough preparation of the meeting.
States parties want a clear focus during the debates on the humanitarian consequences of the use of nuclear weapons, thereby returning to the origins of the campaign that led to the adoption of the TPNW (see below). In this context, debates will take a close look at positive obligations enshrined in the treaty, such as the obligation to provide victim assistance and environmental remediation (Article 6), and how the international community can work together to address this issue.

The meeting will also address a number of technical aspects, including setting of deadlines past the first meeting of States Parties. States Parties will also have to initiate a discussion on the future designation of a competent international authority (or authorities) that would oversee the elimination process of nuclear weapons in a detailed and thorough way, once nuclear-armed states are ready to join the treaty. The meeting will also consider how to enlist the scientific community to provide scientific advice for the treaty regime, both to assist with the technical aspects of the elimination of nuclear weapons, but also to provide advice on the humanitarian consequences and the risks arising from nuclear weapons. Organisers consider that research on these specific issues would constitute an important deliverable of this first States Parties meeting.

Finally, procedural issues need to be tackled, such as the adoption of rules of procedure.

UN goal of global nuclear disarmament

Global nuclear disarmament – in other words, a world free of nuclear weapons – is one of the United Nations' most long-standing objectives. The first ever resolution adopted by the UNGA in January 1946 called for ‘control of atomic energy to the extent necessary to ensure its use only for peaceful purposes’ and for ‘the elimination from national armaments of atomic weapons’.

The 1970 Non-Proliferation Treaty is the cornerstone of the global non-proliferation and disarmament regime. It grants the five nuclear-weapon states (NWS) recognised by the NPT – China, France, Russia, the UK, and the USA – exclusive rights to possess nuclear arsenals, but also obliges them ‘to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race ... and to nuclear disarmament’ (NPT Article VI). However, non-NWS have expressed dissatisfaction at the pace of nuclear disarmament, and accused the NWS of failing to specify how they would design a ‘verifiable, enforceable nuclear disarmament regime’ under the NPT.

Moreover, Russia’s repeated threat to use nuclear weapons in the context of its military aggression against Ukraine has shown that verbal reassurances from the NWS can be entirely meaningless. On 3 January 2022, a mere six weeks before Russia launched its attack on Ukraine, Russia joined the leaders of the four other NWS to issue a joint statement on ‘Preventing Nuclear War and Avoiding Arms Races’, stating that ‘nuclear weapons ... should serve defensive purposes, deter aggression, and prevent war’ and that ‘the avoidance of war between nuclear-weapon states and the reduction of strategic risks’ are the NWS’ ‘foremost responsibilities’. As experts have pointed out, Russia’s attack on Ukraine instead ‘marks the first time that nuclear blackmail has been used to shield a full-scale conventional invasion.’

The UN’s global nuclear disarmament objective, first declared in 1946, has patently not been achieved. Global stocks of nuclear weapons are at their lowest in over 50 years, but there are still an estimated 12,700 nuclear weapons worldwide, many on high-alert status. The overall number of nuclear weapons worldwide has fallen – from a peak of 70,000 in the mid-1980s; however, all NWS are currently investing vast sums in modernising their nuclear arsenals and delivery systems, and some are drastically increasing the number of nuclear weapons they hold. Russia and the USA have launched large-scale programmes to replace and modernise nuclear warheads, missile and aircraft delivery systems, and nuclear weapon production facilities. President Joe Biden’s administration has conducted a Nuclear Posture Review (NPR) (the fifth since the first NPR in 1994), which will
determine whether to adjust the nuclear programmes that the administration inherited from its predecessor and whether to amend these spending plans or how. (On 28 March 2022, the Department of Defense transmitted the classified 2022 Nuclear Posture Review (NPR) and Missile Defense Review (MDR) to Congress. The unclassified versions have not yet been published). Even though the nuclear arsenals of the other nuclear-armed states are much smaller, all are either developing or deploying new weapon systems or planning to do so. The US Department of Defense forecasts that by 2030, China will have almost tripled its current stock of nuclear warheads, to 1,000. The UK is also increasing the size of its nuclear arsenal, from 225 nuclear warheads to a maximum of 260. Pakistan, which has an estimated 165 nuclear weapons, is reported to be expanding its nuclear arsenal faster than any other country and developing new delivery systems. India has developed more sophisticated technology that enhances the effectiveness of the country’s nuclear arsenal.

Figure 1 – Nuclear weapons worldwide (January 2022 figures)

Data source: Federation of American Scientists. All figures are estimates.

Moreover, on 27 February 2022, Belarus held a referendum to delete the reference to the country’s non-nuclear status from its Constitution. This change to the constitution could see Russian nuclear weapons deployed to Belarus. Belarus is a close ally of Russia, with the country participating in the Russian invasion of Ukraine. Belarus gave up its Soviet-era nuclear weapons infrastructure following the fall of the Soviet Union, and transferred all remaining nuclear weapons to Russia by 1996.

New momentum towards nuclear disarmament

Following several years of preparatory work, the Treaty on the Prohibition of Nuclear Weapons (TPNW) was adopted on 7 July 2017. The treaty includes a comprehensive set of prohibitions on participating in any nuclear weapons activities. These include undertakings not to develop, test, produce, acquire, possess, stockpile, use or threaten to use nuclear weapons. Furthermore, the treaty also prohibits the deployment of nuclear weapons on national territory and the provision of assistance to any state in the conduct of prohibited activities. The treaty also obliges States Parties to offer adequate assistance to individuals ‘affected by the use or testing of nuclear weapons’ as well as to take ‘necessary and appropriate measures of environmental remediation’ in areas under their jurisdiction or control ‘contaminated as a result of activities related to the testing or use of nuclear weapons’.

A total of 122 UN member states voted in favour of the adoption of the TPNW, one voted against (the Netherlands) and one abstained (Singapore). The nine states known to have military nuclear programmes did not vote, as was the case for most NATO member states. The treaty was opened for signature on 20 September 2017 and has since been signed by 86 UN member states; 62 states have ratified it so far, allowing it to enter into force on 22 January 2021.
The Humanitarian Initiative

The nuclear disarmament debate has been strongly influenced by the Humanitarian Initiative, which brings together states and civil society representatives dissatisfied with the lack of progress in nuclear disarmament in the context of the NPT. Noting that nuclear weapons are the only weapons of mass destruction not to have been explicitly prohibited under international law, supporters of the initiative pledged to fill the 'legal gap', by calling for effective measures (a legally binding instrument) to prohibit nuclear weapons, based on international humanitarian law. On 7 December 2015, the UN General Assembly adopted Resolution 70/48 on a humanitarian pledge to eliminate nuclear weapons. Advocates of the total elimination of nuclear arms believe a comprehensive ban is the only way to avoid the potentially catastrophic humanitarian consequences of a nuclear weapon explosion, which 'would not be constrained by national borders but have regional or even global effects, potentially threatening the survival of humanity'. By stigmatising nuclear weapons, supporters of the TPNW hope that it will create a new norm and thereby put NWS under pressure to show progress on disarmament.

However, Russia's rhetoric over the past few months since the start of its war against Ukraine has shown that stigmatisation has failed so far, and that, instead, the taboo against the use of nuclear weapons has been significantly eroded.

TPNW and the global non-proliferation/disarmament regime

Supporters of the TPNW argue that it reinforces and complements the existing non-proliferation and disarmament regime. All States Parties to the NPT are – already – obliged, pursuant to Article VI, 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'. Experts argue that the TPNW also strengthens the non-proliferation norm laid down in the NPT by legally obliging States Parties to sign or keep in place safeguards agreements with the International Atomic Energy Agency (IAEA), to ensure that peaceful nuclear material is not diverted for weapons development. The TPNW also prohibits nuclear testing, which the international community has sought to outlaw through the Comprehensive Test Ban Treaty (CTBT). Even though 184 countries have signed and 168 states have ratified the CTBT, the treaty has not yet come into force, since China, the Democratic People's Republic of Korea, Egypt, India, Iran, Pakistan and the USA have not signed and/or ratified it.

Moreover, supporters of the TPNW hope that, in the long run, the treaty will discourage investment in the production of nuclear weapons (and related technology), even in states not party to the treaty. The treaty 'strengthens international legal structure and norms against nuclear weapons possession and use, and further delegitimises nuclear weapons'. Experience with the 1999 Mine Ban Treaty and the 2010 Convention on Cluster Munitions has shown that de-legitimising weapons can discourage investment, since many financial institutions have policies that deny financial services to companies producing weapons that are prohibited by international law. Consequently, supporters hope that it will make it harder to produce nuclear weapons, creating an incentive to disarm. Moreover, the prohibition of other weapons of mass destruction, such as chemical or biological weapons, has successfully curbed proliferation and advanced recognition of norms against such weapons.

Opposition to a ban on nuclear weapons

Opponents of a ban on nuclear weapons consider them to be an essential element of deterrence and, as such, a means to prevent conflict and war. Deterrence is a military doctrine according to which the risk that a country will retaliate with the nuclear weapons it possesses deters an enemy from attacking. This doctrine is supported by the principle of mutual assured destruction, which is founded on the notion that a nuclear attack by one NWS on another would be met with a nuclear counter-attack, leading to the annihilation of both the attacker and the defender. Nuclear deterrence remains an important aspect of the security policies of all NWS and their allies. Members
of NATO, a military alliance that includes three NWS (France, the UK and the USA) confirmed in June 2021 that nuclear defence capabilities would remain a core element of NATO’s overall strategy, and that ‘as long as nuclear weapons exist, NATO will remain a nuclear alliance’. In September 2017, NATO expressed the alliance's disapproval of the TPNW and signalled that there would be ‘no change in the legal obligations on [NATO] countries with respect to nuclear weapons’.

Production of the TPNW

Criticism of the TPNW

One of the TPNW's greatest weaknesses is the fact that the nuclear-armed states and their allies were not involved in its drafting, and maintain that they have no intention to sign it. Moreover, strong disagreements between supporters and opponents of the treaty are likely to affect future negotiations under the NPT and may derail the next NPT review conference, currently scheduled to take place in August 2022, potentially further weakening the existing non-proliferation and disarmament regime. The TPNW has also been criticised as having been hastily drafted, and as lacking rigorous verification and enforcement provisions.

Potential weakening of NATO’s nuclear deterrent

The TPNW explicitly prohibits the ‘stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in [the territory of a State Party], or at any place under its jurisdiction or control’. Five NATO states – Belgium, Germany, Italy, the Netherlands and Turkey – host US nuclear weapons on their territory as part of the alliance's collective security strategy. If any one of these states were to sign the TPNW, the stationing of nuclear weapons on their territory would become illegal, thus weakening the Alliance’s nuclear deterrent. In 2017, NATO dismissed the TPNW as ineffective, since it will not engage any state actually possessing nuclear weapons, and disregards the realities of the increasingly challenging international security environment.

EU Member States' views on the TPNW

EU Member States' views on the TPNW diverge. France is fully committed to step-by-step nuclear disarmament, but considers nuclear weapons to be an essential part of the country’s security strategy for now. A further 20 EU Member States are NATO members and have signed up to NATO’s commitment to nuclear deterrence. These include four which host US tactical nuclear weapons (Belgium, Germany, Italy and the Netherlands) and 16 that are covered by NATO’s extended nuclear deterrence pledges, including all the central and eastern European Member States. By contrast, Austria, which is not a NATO member, was one of the key drivers behind the Humanitarian Initiative. Only Austria, Cyprus, Ireland, Malta and Sweden voted in favour of the TPNW, and only Austria, Ireland and Malta have ratified it. There is no agreed EU position on the TPNW, reflecting long-standing divisions on nuclear disarmament. All Member States are party to the NPT, and as such committed to pursuing policies designed to achieve a world without nuclear weapons.
Russia’s invasion of Ukraine has prompted both Finland and Sweden to seek NATO membership. Both countries submitted official applications to join NATO on 18 May 2022. For Sweden, this will raise the question of how it will relate to NATO’s nuclear policy. Sweden voted in favour of the TPNW in July 2017, but has neither signed nor ratified the treaty. In the context of Sweden’s NATO application, the Swedish Prime Minister announced that the country would make a unilateral reservation against the deployment of nuclear weapons, and that Sweden could still be a voice for and work for disarmament and non-proliferation of nuclear weapons, but that the country would not sign the TPNW.

The European Parliament

In a recommendation adopted on 21 October 2020, the Parliament noted that the TPNW provided ‘evidence of the desire to achieve the objective of a nuclear weapons-free world’. Parliament highlighted that nuclear disarmament had to be part of a gradual process guaranteeing the undiminished security of all, while preventing a new arms race. Parliament also noted that, as a means of preventing the development of nuclear weapons arsenals, the Fissile Material Cut-off Treaty was a vital and irreplaceable step towards a world free of nuclear weapons. The Fissile Material Cut-off Treaty is a proposed international agreement that would prohibit the production of the two main components of nuclear weapons: highly enriched uranium (HEU) and plutonium. In the same recommendation, Parliament reaffirmed its full support for the NPT and its three mutually reinforcing pillars of non-proliferation, disarmament and peaceful use of nuclear energy.
Figure 2 – EU Member States' views on the TPNW

France is the only EU Member State to own nuclear weapons, and is recognised as a nuclear-weapon state under the NPT

Source: EPRS.

ENDNOTE

For further detail, see Peace and Security in 2021 - Overview of EU action and outlook for the future, p.28

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