

The Significance of the Entry Into Force of the Treaty on the Prohibition of Nuclear Weapons

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Introduction

The Treaty on the Prohibition of Nuclear Weapons (TPNW), adopted on 7 July 2017, will enter into force 90 days after the 50th state deposits its instrument of ratification, accession, approval or accession.¹ The entry into force of the TPNW not only triggers states parties' implementation of the treaty but, as an important milestone in the development of the norm against nuclear weapons, can influence the behaviour of states not party, as evidenced by other weapons prohibition treaties.

What is the legal significance of the TPNW's entry into force?

Once a treaty enters into force, all of its articles apply to all *states parties*, the countries that have deposited instruments of ratification, acceptance, approval or accession, and thereby agreed to be bound by its articles. For any state that ratifies or accedes to the TPNW after the date on which the 50th instrument of ratification or accession is deposited, entry into force of the treaty *for that state* will occur 90 days after its ratification or accession. *Signatory states* are not bound to implement the treaty in the same way that states parties are, but must refrain from violating its object and purpose. Before entry into force, both states parties and signatory states are only bound to refrain from violating the treaty's object and purpose.²

Essentially, entry into force means if a state has joined the treaty, it fully applies to that state.

The Treaty on the Prohibition of Nuclear Weapons contains both positive obligations and prohibitions that states parties must implement and abide by upon entry into force, as well as a schedule of meetings for states parties and observers to consider the treaty's implementation, which will commence within one year of its entry into force.

Positive Obligations

- **Declarations** (Article 2): All states parties must submit a declaration within 30 days of entry into force about its nuclear-weapon status, including if it has nuclear weapons, hosts another states' nuclear weapons on its territory or has eliminated its nuclear weapons and related facilities.
- **Safeguards** (Article 3): All states parties must maintain their current International Atomic Energy Agency (IAEA) safeguards agreement at the time of entry into force and bring into force a comprehensive safeguards agreement at minimum.
- **Elimination and verification** (Article 4): Nuclear-armed states that join the treaty must follow one of the treaty's pathways for the verified elimination of their nuclear weapon programmes.
- **Removal** (Article 4): Any state party that has nuclear weapons in its territory or any place under its jurisdiction or control that are owned or possessed by another state must remove those weapons.

- **National Implementation** (Article 5): All states parties must adopt necessary national measures to implement its obligations under the treaty and to prevent and suppress treaty violations by people or on territory under its jurisdiction or control.³
- **Victim Assistance & Environmental Remediation** (Article 6): States parties must provide assistance to individuals under their jurisdiction who have been impacted by nuclear weapons use or testing, as well as “take necessary and appropriate measures” towards the environmental remediation of areas under its control contaminated by nuclear weapons use or testing.⁴
- **International Cooperation and Assistance** (Article 7): All states parties must cooperate with other states parties to implement the treaty. States parties in a position to do so, as well as states parties that have used and tested nuclear weapons, are obliged to help affected states parties with victim assistance and environmental remediation. States parties may also provide support for the development of national implementation measures and reporting on and destruction of nuclear weapon stockpiles.⁵
- **Universalisation** (Article 12): All states parties must urge states not party to join.

Prohibitions

Article 1 prohibits states parties 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.

Following entry into force of the TPNW, all parties to the treaty will need to take care at all times to ensure that they are complying with all prohibitions under Article 1. Of greatest relevance to most states, especially those with close military ties to nuclear-armed states, is the prohibition on encouraging or assisting another state to engage in a prohibited activity.

Meetings

Within one year of the TPNW's entry into force and biennially after that, states parties and observers will convene for a meeting of states parties to consider and take decisions on the treaty's implementation.⁶ At the first meeting of states parties, for example, participants will decide on setting the deadline for the destruction of nuclear weapons for nuclear-armed states who join.⁷ The rights of observers will be determined when states parties adopt the rules of procedure at the first meeting of states parties. Five years after entry into force and every six years after that, states parties and observers will convene for a conference to review the treaty's operation and progress in achieving its purpose.⁸ States not party, as well as relevant institutions and non-governmental organisations, can observe the meetings and conferences of states parties of the TPNW after it enters into force.⁹

How will the TPNW's entry into force impact countries that haven't joined?

While states not party are not legally bound to abide by the prohibitions and obligations in the treaty, the anti-nuclear-weapon norm strengthened by the TPNW's entry into force can still shape their behaviour and build pressure for their eventual accession. The entry into force of previous weapons prohibitions, including on landmines and cluster munitions, has led to demonstrative changes in adherence to the treaties' prohibitions and positive obligations by states not party, including the following examples:

- **Production:** Since the entry into force of the Convention on Cluster Munitions (CCM) in 2010 and the Mine Ban Treaty (MBT) in 1999, production of the prohibited weapons among states parties and states not party has nearly ceased: three countries are believed to actively produce landmines and ten countries are likely actively producing cluster munitions.¹⁰ Textron and Orbital ATK, two companies producing cluster munitions in the United States, a state not party, have stopped production since the CCM's entry into force.¹¹ States not party to the MBT, like Egypt, adopted explicit policies against producing landmines after that treaty's entry into force.¹²
- **Divestment:** Financial institutions often choose not to invest in “controversial weapons,” which are typically weapons prohibited by international law. The entry into force of the TPNW clearly puts nuclear weapons in this category and will likely trigger additional divestment.¹³ Following the entry into force of the CCM, the mutual fund Eventide Asset Management, based in the United States, a state not party, excluded cluster munitions from its investments.¹⁴ In addition, states parties may issue directives to financial institutions under their jurisdiction to divest from companies producing the prohibited weapon in states not party to comply with the treaty's prohibition on assistance with banned activities. In anticipation of the entry into force of the TPNW, some financial institutions, including ABP, one of the five largest pension funds in the world, are already divesting from nuclear weapons producers.¹⁵
- **Policies against use and transfer:** Before the entry into force of the MBT, roughly 34 states exported landmines. Since the entry into force of the MBT, there have been no reported landmine transfers.¹⁶ Very few states not party have used landmines or cluster munitions since the prohibition treaties entered into force. In 2014, the United States, a state not party, announced that it would no longer use landmines outside of the Korean Peninsula, or assist, encourage, or induce other nations to use, stockpile, produce, or transfer antipersonnel mines outside of Korea.¹⁷ The policy was changed under the Trump administration, but more than 100 U.S. members of Congress protested the move in a joint letter.¹⁸ Since the CCM's entry into force, the United States has only used cluster munitions once, in an isolated 2009 strike in Yemen, and in 2016, it decided to halt transfers of cluster munitions to Saudi Arabia.¹⁹
- **International cooperation and assistance:** The United States is one of the top five donors to support the implementation of MBT obligations, including landmine clearance and victim assistance.²⁰

Beyond concrete changes in behaviour and policies, the entry into force of the TPNW can advance the stigmatisation of nuclear weapons within states not party, including by:

- **Prompting further debates:** The treaty's entry into force could trigger additional discussions within parliaments and media in states not party about the prohibition of nuclear weapons.

Already, over 1,600 elected representatives have called on their governments to join the TPNW, as have capitals in nuclear-armed states like Paris and Washington D.C.²¹

- **Institutionalisation:** The establishment of additional infrastructure to support the treaty's objectives, such as a conference to promote its universalisation, could increase its influence beyond states parties.²² In addition, as a new legal instrument, the TPNW has already been referenced in multilateral fora that states not party participate in, including the UN General Assembly and meetings of relevant treaties.²³
- **Impacting alliances:** States not party that are in military alliances with states parties may be impacted by the TPNW's entry into force if the states parties are required to alter their cooperation with nuclear-armed and nuclear-allied states due to their treaty obligations. For example, while members of the NATO alliance may join the TPNW, to be in compliance with its prohibitions once the treaty enters into force, these states will need to renounce the use of nuclear weapons on their behalf.²⁴ All states parties are also required by the TPNW to encourage states not party to join, including their allies.

Due in part to this mounting political and normative pressure, countries opposing a treaty upon its adoption have joined treaties after their entry into force.²⁵ Given the overwhelming public support for the TPNW in many countries that have not yet joined it (79% of Australians, 79% of Swedes, 78% of Norwegians, 75% of Japanese, 84% of Finns, 70% of Italians, 68% of Germans, 67% of French, 64% of Belgians and 64.7% of Americans) these countries may also join the TPNW in the years to come.²⁶

¹ Treaty on the Prohibition of Nuclear Weapons, Article 15

² Vienna Convention on the Law of Treaties, <https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm>

³ An example of such national legislation is Ireland's Prohibition of Nuclear Weapons Act, signed into law in December 2019, available at: <https://www.oireachtas.ie/en/bills/bill/2019/60/>. See also International Committee of the Red Cross, "Model Law for the Treaty on the Prohibition of Nuclear Weapons," March 2019, available at: <https://www.icrc.org/en/document/model-law-treaty-prohibition-nuclear-weapons-0>

⁴ Harvard Law School International Human Rights Clinic, "Victim Assistance and Environmental Remediation in the Treaty on the Prohibition of Nuclear Weapons," April 2019, http://hrp.law.harvard.edu/wp-content/uploads/2019/05/TPNW_Myths_Realities_April2019.pdf

⁵ Bonnie Docherty, "A 'light for all humanity': the treaty on the prohibition of nuclear weapons and the progress of humanitarian disarmament," Global Change, Peace & Security, 2018, DOI: 10.1080/14781158.2018.1472075

⁶ Treaty on the Prohibition of Nuclear Weapons, Article 8, 11

⁷ Treaty on the Prohibition of Nuclear Weapons, Article 4

⁸ Treaty on the Prohibition of Nuclear Weapons, Article 8

⁹ Treaty on the Prohibition of Nuclear Weapons, Article 8; Sweden and Switzerland have made formal commitments to observe. See: "The Federal Council Decides Not to Sign the Treaty on the Prohibition of Nuclear Weapons at the present time," Swiss Federal Council, 15 August 2018, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-71821.html>; "The Government's continued work for nuclear disarmament," Ministry of Foreign Affairs, 12 July 2019, <https://www.government.se/articles/2019/07/the-governments-continued-work-for-nuclear-disarmament/>.

¹⁰ Cluster Munitions Monitor 2019, <http://www.the-monitor.org/en-gb/reports/2019/cluster-munition-monitor-2019/cluster-munition-ban-policy.aspx>; Landmine Monitor 2019, <http://www.the-monitor.org/en-gb/reports/2019/landmine-monitor-2019/ban-policy.aspx>.

¹¹ Worldwide Investment in Cluster Munitions, PAX, December 2018, <https://www.paxforpeace.nl/publications/all-publications/worldwide-investment-in-cluster-munitions-2018>.

¹² "Egypt: Mine Ban Policy," Landmine and Cluster Munitions Monitor, 9 October 2018, <http://www.the-monitor.org/en-gb/reports/2018/egypt/mine-ban-policy.aspx#ftn7>; "United States: Mine Ban Policy," Landmine and Cluster Munitions Monitor, 18 December 2019, <http://www.the-monitor.org/en-gb/reports/2019/united-states/mine-ban-policy.aspx#:~:text=%5B13%5D%20The%202020%20Trump%20administration,countries%20between%201969%20and%201992>.

¹³ ICAN, "Divestment and Nuclear Weapons," April 2020, https://www.icanw.org/divestment_and_nuclear_weapons.

¹⁴ Worldwide Investment in Cluster Munitions.

¹⁵ "ABP, The Netherlands" Don't Bank on the Bomb, <https://www.dontbankonthebomb.com/abp/>; ABP, "Verslag Duurzaam en verantwoord beleggen 2017" (Sustainable and Responsible Investment Report 2017), p. 21, http://jaarverslag.abp.nl/docs/ABP_JV_2017/pdfs/web_6318_abp_duurzaam_beleggen_2017.pdf.

¹⁶ Landmine Monitor 2019.

¹⁷ "Fact Sheet: Changes to the U.S. Anti-Personnel Landmine Policy," The White House, 23 September 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/09/23/fact-sheet-changes-us-anti-personnel-landmine-policy>.

¹⁸ Letter from Senator Leahy to Defense Secretary Esper, 6 May 2020,

<https://www.leahy.senate.gov/imo/media/doc/kf%20ac%20Questions%20for%20SecDefense%20Final.pdf>

¹⁹ John Hudson, "Exclusive: White House Blocks Transfer of Cluster Bombs to Saudi Arabia" Foreign Policy, 27 May 2016, <https://foreignpolicy.com/2016/05/27/exclusive-white-house-blocks-transfer-of-cluster-bombs-to-saudi-arabia/>.

²⁰ Landmine Monitor 2019.

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- ²¹ ICAN, "Full List of Pledge Takers," https://pledge.icanw.org/full_list_of_pledge_takers; ICAN, "Cities Appeal," <https://cities.icanw.org/>.
- ²² China, non-party state to the Comprehensive Test Ban Treaty, delivers statements to the CTBT's Article XIV conferences on achieving the treaty's entry into force. See: <https://www.ctbto.org/the-treaty/article-xiv-conferences/>
- ²³ For example, see UN General Assembly resolution A/C.1/74/L.19 "Nuclear Disarmament," available at: <https://reachingcriticalwill.org/images/documents/Disarmament-fora/icom/icom19/resolutions/L19.pdf> and NPT/CONF.2020/PC.III/CRP.4/Rev.1, the Recommendations for the 2020 Review Conference of the Nuclear Non-Proliferation Treaty, available at: <https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom19/documents/CRP4Rev1.pdf>
- ²⁴ Harvard Law School International Human Rights Clinic "Nuclear Umbrella Arrangements and the Treaty on the Prohibition of Nuclear Weapons," June 2018 http://hrp.law.harvard.edu/wp-content/uploads/2018/06/Nuclear_Umbrella_Arrangements_Treaty_Prohibition.pdf
- ²⁵ For example, France did not join the Nuclear Non-Proliferation Treaty (NPT) until 1992, 22 years after it entered into force. It did not sign the Partial-Test-Ban-Treaty, which was signed in 1963; and continued to conduct nuclear tests until 1996. Now it is a member and an active participant in both the NPT and Comprehensive Test Ban Treaty, which followed the Partial-Test-Ban-Treaty.
- ²⁶ "Polls: Public opinion in EU host states firmly opposes nuclear weapons," ICAN, https://www.icanw.org/polls_public_opinion_in_eu_host_states_firmly_opposes_nuclear_weapons; "75 years after Hiroshima, here are 4 things to know about nuclear disarmament efforts," August 6 2020 <https://www.washingtonpost.com/politics/2020/08/06/75-years-after-hiroshima-bombing-here-are-4-things-know-about-nuclear-disarmament-efforts/>; Ipsos Public Opinion Poll, "Support for the UN Treaty on the Prohibition of Nuclear Weapons," 13 November 2018; Olof Palme International Center, "The Swedish people are in favor of a nuclear ban," 12 June 2019, <https://www.palmecenter.se/article/svenska-folket-ar-for-ett-karnvapenforbud/>; "Survey: 8 out of 10 Labor voters support a nuclear ban," Dagsavisen, 2 April 2019, <https://www.dagsavisen.no/nyheter/innenriks/undersokelse-8-av-10-ap-velgere-stotter-atomvapenforbud-1.1459213>; Rauhanliitto, "The vast majority of Finns are in favor of banning nuclear weapons," 7 November 2019, <https://rauhanliitto.fi/rauhanliitto/ajankohtaista/tiedotteet/laaja-enemmisto-suomalaisista-kannattaa-ydinaseiden-kieltamista>; Le Mouvement de la Paix, "76% are for France's commitment in the nuclear weapons elimination process," 5 July 2018, https://www.mvtpaix.org/wordpress/wp-content/uploads/2018/07/CP-05.07.2018-Sondage-TIAN_EN.pdf