



L&RS Note

The Treaty on the Prohibition of Nuclear Weapons

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Abstract

The *Prohibition of Nuclear Weapons Bill* will enable Ireland to become a State Party to the United Nations [Treaty on the Prohibition of Nuclear Weapons](#) (2017) and will give effect to the provisions of the Treaty in Irish law. The Treaty prohibits participation in a range of activities relating to the transfer, development and use of nuclear weapons. This L&RS Note is published in advance of the *Prohibition of Nuclear Weapons Bill* and provides a brief background in relation to disarmament and nuclear weapons, the core provisions of the Treaty and the reaction to the Treaty.

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Glossary

This section sets out a number of definitions for the purpose of this L&RS Note.

Arms control: refers to efforts to limit the increase of existing weapons within one State (vertical proliferation), their spread to States not yet possessing them (horizontal proliferation) or to non-State actors (sub-State proliferation).

Disarmament: aims at prohibiting the development, production, purchase, storage, maintenance and transfer of certain weapons and at destroying the existing stocks.

Non-Proliferation Treaty [NPT]: is the Treaty on the Non-Proliferation of Nuclear Weapons.

Nuclear Energy: is energy that is produced when the nucleus of an atom is divided or joined to another atom.

Nuclear Weapon States [NWS]: are defined under Article IX of the NPT as a State “which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.” This is therefore limited to the US, Russia, the UK, China and France.

Non-Nuclear Weapon States [NNWS]: refers to those States which do not fall under the definition of NWS set out above. This paper also refers to **nuclear weapon possessing States** which include the US, Russia, the UK, China, France, India, Pakistan, Israel and the Democratic People’s Republic of Korea.

P5: is a reference to the five permanent members of the United Nations Security Council: the UK, the US, France, China and Russia.

TPNW: is the Treaty on the Prohibition of Nuclear Weapons.

Timetable of major events

1940s

August 1942 – Manhattan Project established in the US to develop the first nuclear weapon

16 July 1945 – The US conducts its first nuclear weapon test, code-named “Trinity” in New Mexico

6 August 1945 – The US detonates an atomic bomb over the Japanese city of Hiroshima

9 August 1945 – The US detonates a second atomic bomb over the Japanese city of Nagasaki

24 January 1946 – In its first resolution, the UN General Assembly calls for the elimination of nuclear weapons

29 August 1949 – The Soviet Union tests its first nuclear weapon

1950s

3 October 1952 – The UK tests its first nuclear weapon

1 November 1952 – The US tests the first hydrogen bomb

1 December 1959 – The Antarctic Treaty opens for signature banning nuclear explosions and the disposal of nuclear waste in Antarctica

1960s

13 February 1960 – France tests its first nuclear weapon

October 1962 – The Cuban Missile Crisis occurs

5 August 1963 – The Partial Test Ban Treaty opens for signature banning nuclear testing in the atmosphere, outer space and under water

16 October 1964 – China tests its first nuclear weapon

14 February 1967 – The Treaty of Tlatelolco is signed prohibiting the manufacture, testing or acquiring of nuclear weapons in Latin American

1 July 1968 – The Treaty on the Non-Proliferation of Nuclear Weapons is opened for signature, with non-nuclear weapon States agreeing to never acquire nuclear weapons and nuclear weapon States agreeing to commence negotiations leading to nuclear disarmament

1970s

18 May 1974 – India tests its first nuclear weapon

22 September 1979 – A nuclear explosion is detected in the South Indian Ocean, it is believed to have been a nuclear weapon test carried out jointly by South Africa and Israel¹

¹ See Leonard Weiss, “A double-flash from the past and Israel’s nuclear arsenal” (3 August, 2018) *Bulletin of the Atomic Scientists*. Available at <https://thebulletin.org/2018/08/a-double-flash-from-the-past-and-israels-nuclear-arsenal/>.

1980s

6 August 1985 – The Treaty of Rarotonga opens for signature prohibiting the manufacturing, stationing or testing of nuclear weapons within the South Pacific

8 December 1987 – The Soviet Union and the US sign the Intermediate-range Nuclear Forces Treaty to eliminate all land-based missiles held by the two States with ranges between 500 and 5,500 kilometres

1990s

15 December 1995 – The Treaty on the Southeast Asia Nuclear Weapon-Free Zone opens for signature

11 April 1996 – The Treaty of Pelindaba opens for signature, establishing an African nuclear weapon-free zone

8 July 1996 – The International Court of Justice delivers its advisory opinion on the legality of the use or threat of use of nuclear weapons

24 September 1996 – The Comprehensive Nuclear Test Ban Treaty opens for signature, banning all nuclear explosions

May 1998 – India and Pakistan conduct nuclear tests

2000s

9 October 2006 – The DPRK carries out its first nuclear test

2010s

20 September 2017 – The Treaty on the Prohibition of Nuclear Weapons opens for signature, prohibiting the development, testing, production, manufacture, acquisition, possession or stockpiling of nuclear weapons

1 February 2019 – President Trump announces that the US will be withdrawing from the Intermediate-range Nuclear Forces Treaty, raising concerns in relation to European security²

² See Katarzyna Kubiak, “The INF Treaty: European Perspectives on the Impending US Withdrawal” (December 2018). Available at <https://www.armscontrol.org/act/2018-12/features/inf-treaty-european-perspectives-impending-us-withdrawal>

Summary

This L&RS Note is published ahead of the *Prohibition of Nuclear Weapons Bill*, which is currently listed as priority legislation for publication this session on the Government's [Legislation Programme for the Summer Session 2019](#). A General Scheme of the Bill was published by the Department of Foreign Affairs and Trade in October 2018.³ The purpose of the Bill will be to give effect to the [Treaty on the Prohibition of Nuclear Weapons](#) [TPNW]. The text of the TPNW was adopted by the General Assembly of the UN on 7th July 2017. Speaking on the adoption of the Treaty at the UN the Minister for Foreign Affairs and Trade, Simon Coveney TD, stated the following:

"On the challenging road to a world free from nuclear weapons, this Treaty represents an important turning point. A choice has been made by the majority about the way ahead. Nuclear weapons now join all other weapons of mass destruction, which have already been prohibited.

This Treaty will establish an important global norm and will help us to continue to raise awareness of the risks posed by the existence of these weapons. It honours the memory of the victims of nuclear weapons and the key role played by survivors in providing the living testimony which calls on us to ensure that these weapons are never used again. It also provides pathways for the accession of those States possessing nuclear weapons, when they decide to join."⁴

Since the first use of nuclear weapons, concerns have arisen in relation to the existential threat they pose to humanity. Concerns also arise in relation to issues such as nuclear terrorism, cybersecurity, the proliferation of nuclear weapons, the damage caused by nuclear weapons testing to the environment and the disproportionate impact of nuclear weapon detonation on women and girls.⁵

A number of multilateral treaties have been concluded in a concerted effort by the international community to address the issues arising from the existence of nuclear weapons. The cornerstone of nuclear disarmament is the [Treaty on the Non-Proliferation of Nuclear Weapons](#) [the NPT]. This divides States Parties into nuclear weapon States [NWS] and non-nuclear weapon States [NNWS]. The NPT provides for the non-proliferation of nuclear weapons to NNWS and creates obligations on NWS to negotiate an agreement leading to complete verifiable nuclear disarmament.

Ireland has been at the forefront of developments in relation to nuclear disarmament, having played a leading role in the background to the NPT. Ireland, as a member of the New Agenda

³ Available [here](#).

⁴ Statement by Minister Coveney on the UN adoption of a Treaty on the Prohibition of Nuclear Weapons, available at <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2017/july/nuclear-treaty/>.

⁵ Dimmen, A.G., "GENDERED IMPACTS: The humanitarian impacts of nuclear weapons from a gender perspective" (2014) *Paper No 5 of 6* at the ILPI-UNIDIR conference Series. Available at <http://ilpi.org/publications/gendered-impacts-the-humanitarian-impacts-of-nuclear-weapons-from-a-gender-perspective/>.

Coalition⁶ and the Vienna Group of 10,⁷ continues to highlight humanitarian concerns in relation to nuclear weapons. Irish Working Papers have recently focused on providing a gender analysis in relation to nuclear weapons. Ireland was among a core group of States that led the discussions leading to the adoption of the TPNW.

The TPNW introduces a number of legally binding obligations in relation to nuclear weapons. These include prohibitions on:

- the development, testing, production, manufacture, acquisition, possession or stockpiling of nuclear weapons;
- the transfer of nuclear weapons;
- receiving and transfer of or control over nuclear weapons;
- the threat or use of nuclear weapons;
- assisting, encouragement or inducement of prohibited activities under the TPNW;
- seeking or receiving any assistance to engage in prohibited activities under the TPNW; and
- allowing any stationing, installation or development of nuclear weapons in the territory of a State Party.

The TPNW has been met with a mixed response. Proponents of the TPNW⁸ have welcomed the Treaty as an important step in furthering the goal of attaining a world free from nuclear weapons. By contrast, nuclear weapon possessing States and States that follow the doctrine of nuclear deterrence have criticised the Treaty for purportedly undermining the NPT, not having sufficiently stringent safeguards requirements and failing to take account of the reality of the current international security environment.

⁶ The New Agenda Coalition is a group of six States (Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa) that have sought to build international consensus to make progress on nuclear disarmament.

⁷ The Vienna Group of 10 is a group of ten States (Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden) that have sought to ensure that international nuclear security and safety standards are strengthened.

⁸ Such as civil society groups such as the International Campaign to Abolish Nuclear Weapons, and those States that do not subscribe to the doctrine of nuclear deterrence (e.g. Non-NATO States).

Background to the TPNW

This L&RS Note provides general background information in relation to:

- Disarmament and nuclear weapons;
- Customary international law and nuclear weapons; and
- Ireland and nuclear disarmament.

Disarmament and nuclear weapons

This section provides a brief overview of the development of international policy and treaty developments around nuclear weapons and disarmament. Since the first nuclear test explosion on 16th July 1945 at least eight nations have carried out over 2,000 nuclear test explosions.⁹ A number of international bodies have been established which have sought to abolish or restrict the development of nuclear weapons due to the existential threat they pose to humanity.¹⁰

Gillis sets out the range of potential harm that arises as a result of the detonation of nuclear weapons stating:

“A single bomb has the potential to destroy an entire city, kill millions and contaminate air, land and water for many kilometres around the original blast site for thousands of years. In the event of a major nuclear war, all of civilization would be threatened by the direct effects of the nuclear blasts, the resulting radiation and the nuclear winter that could potentially result when enormous clouds of smoke, fine dust and soot are thrown into the atmosphere. A number of recent studies have shown that even a limited regional nuclear war would cause significant climate disruption, resulting in nuclear famine that could affect over 2 billion people. Physicians and first responders would be unable to work in radioactively contaminated areas, making it impossible to reach and treat survivors.

The heat wave from a nuclear detonation would incinerate everything combustible in its path, the blast wave would collapse all but the strongest buildings and destroy infrastructure, and an electromagnetic pulse would disrupt electricity supply grids, electronics, medical equipment and satellite communications. The destruction could not be limited to military targets or combatants.”¹¹

Concerns also arise in relation to the proliferation of nuclear weapons,¹² the susceptibility of nuclear weapon systems to cyberattacks¹³ and nuclear terrorism.¹⁴

⁹ Alessandra Pietrobon, “Nuclear powers’ disarmament obligation under Treaty on the Non-Proliferation of Nuclear Weapons and the Comprehensive Nuclear Test Ban Treaty: interactions between soft law and hard law” *Leiden Journal of International Law* [2014] Vol. 27(1), 169-188, at 170.

¹⁰ The UN has been at the forefront of efforts to encourage nuclear disarmament. The UN body responsible for promoting and researching disarmament, including nuclear disarmament is the United Nations Office for Disarmament Affairs [UNODA]. More information on the role of the UN and nuclear disarmament can be found at <https://www.un.org/disarmament/wmd/nuclear/>.

¹¹ Melissa Gillis, *Disarmament: A Basic Guide*, UNODA, (4th Edition, 2017) at p. 23-24. Available at <https://www.un.org/disarmament/publications/basic-guide/>.

¹² *Ibid*, at p. 34.

The Stockholm International Peace Research Institute [SIPRI]¹⁵ estimated that there were approximately 14,465 nuclear weapons in 2017.¹⁶ Table 1 (below) shows the breakdown of nuclear warheads and the countries which possess them.

Table 1: Global Nuclear Warheads 2017

Country	Deployed warheads	Other Warheads ¹⁷	Total Inventory
Russia	1,600	5,200	6,800
USA	1,750	4,700	6,450
France	280	20	300
China		280	280
United Kingdom	120	95	215
Pakistan		140-150	140-150
India		130-140	130-140
Israel		80	80
Democratic People's Republic of Korea [DPRK] ¹⁸		10-20	10-20
Total	3,750	10,715	14,465

Source: SIPRI Yearbook 2018, summary p. 11

A number of concerns arise in relation to the testing and use of nuclear weapons due to their destructive capacity and the long term damage to the environment. These concerns were first addressed by the United Nations in the first resolution adopted by the General Assembly.¹⁹ This

¹³ Page Stoutland & Samantha Pitts-Kiefer, "Nuclear Weapons in the Cyber Age: Report of the Nuclear Weapons Study Group" *Nuclear Threat Initiative* (September, 2018). Available at <https://www.nti.org/newsroom/news/new-report-finds-nuclear-weapons-and-related-systems-increasingly-vulnerable-cyberattack/>.

¹⁴ This relates to concerns that nuclear material could fall into the hands of terrorists. The International Atomic Energy Agency maintains an Incident and Trafficking Database on incidents of illicit trafficking and other unauthorized activities involving nuclear and radioactive materials. Between 1993 and 2017 there have been 278 confirmed incidents that involved trafficking or malicious use involving nuclear and radioactive materials. See <https://www.iaea.org/sites/default/files/18/12/itdb-factsheet-2018.pdf>.

¹⁵ SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources.

¹⁶ *SIPRI Yearbook 2018*, Armaments, Disarmament and International Security, Summary at p. 10. Available at https://www.sipri.org/sites/default/files/2018-06/yb_18_summary_en_0.pdf.

¹⁷ "Other warheads" include operational warheads held in storage and retired warheads awaiting dismantlement.

¹⁸ Note that the figures for DPRK are based on estimates and are not included in the total figures.

¹⁹ UN General Assembly (1946) "Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy" A/Res/1(I). Available [here](#).

resolution created the Atomic Energy Commission to examine the problems arising from the discovery of atomic energy. The Atomic Energy Commission was also provided with the power to make recommendations in respect of “the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction.”²⁰ Early efforts at nuclear disarmament were to prove unsuccessful with the onset of the Cold War and the ensuing nuclear arms race between the United States and the Soviet Union.

A number of treaties have been concluded which aim to reduce the impact of nuclear weapons testing and which have been directed towards increasing the disarmament progress of nuclear weapon possessing States. In 1963 the United States, the United Kingdom and the Soviet Union concluded the [Partial Test Ban Treaty](#),²¹ which banned the carrying out of nuclear test explosions in the atmosphere, in outer space and under water. This did not ban the carrying out of nuclear tests underground.

A number of multilateral treaties have also been signed establishing nuclear weapon free zones.²² These are regional treaties aimed at non-proliferation of nuclear weapons within the territories set out in the agreements. These treaties provide for safeguard agreements to be concluded between the States Parties and the International Atomic Energy Agency [IAEA].

Safeguard Agreements – different forms of safeguard agreements exist. The most common of these is the comprehensive safeguard agreement, defined below.

“Under a comprehensive safeguards agreement, the IAEA has the right and obligation to ensure that safeguards are applied on all nuclear material in the territory, jurisdiction or control of the State for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.” - [IAEA](#)

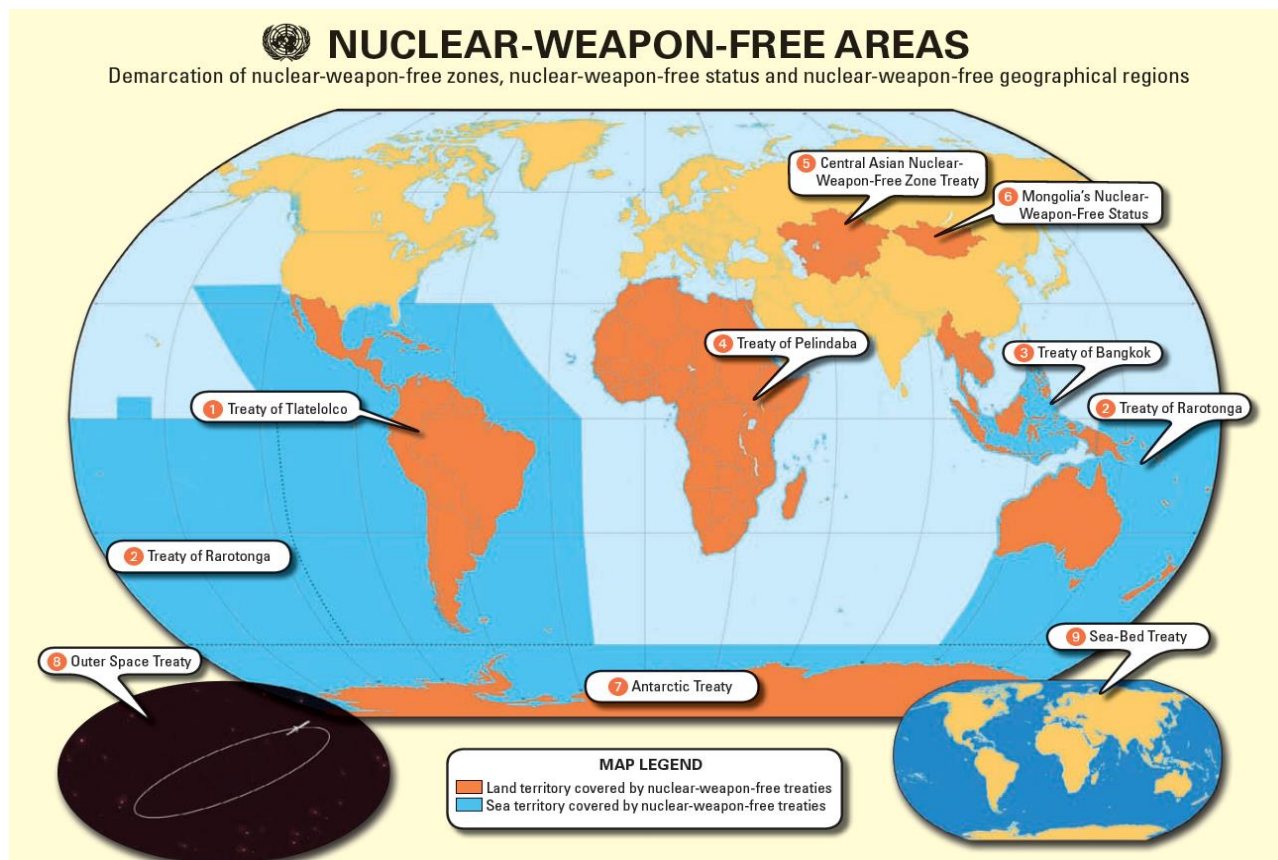
Figure 1. (below) shows the areas subject to nuclear weapon free zone treaties.

²⁰ *Ibid*, at paragraph 5(c).

²¹ The Partial Test Ban Treaty remains in force and has been joined by 123 States Parties, including Ireland. Notable absentees from the Partial Test Ban Treaty include France and China, who had not yet concluded their nuclear weapons testing programs at the time of the treaty.

²² Further information about nuclear weapon free zones is provided by the United Nations Office for Disarmament Affairs. This can be accessed [here](#).

Figure 1. Nuclear Weapon Free Zones



Source: UN Office for Disarmament Affairs, Note 22

The Treaty on the Non-Proliferation of Nuclear Weapons

The [Treaty on the Non-Proliferation of Nuclear Weapons](#) [NPT] entered into force on 5 March 1970. The NPT is the most widely recognised agreement relating to nuclear disarmament and arms control with 189 States Parties. In 1995 at the NPT Review and Extension Conference it was decided to extend the NPT indefinitely. A review conference is held every five years, with the next one being held in 2020.

The NPT divides States Parties into nuclear weapons States [NWS]²³ and non-nuclear weapon States [NNWS]. The NPT is the only legally binding multilateral treaty relating to nuclear disarmament that has been signed by all the NWS. The NPT creates obligations on NNWS to forgo developing or manufacturing nuclear weapons. NWS are required to prevent the transfer of nuclear weapons to NNWS and are obliged to avoid aiding NNWS in the manufacture or development of nuclear weapons.

²³ Article IX defines a NWS as any State which has manufactured and exploded a nuclear device prior to 1967, i.e. the US, the UK, China, Russia and France. This excludes nuclear weapon possessing States such as India, Pakistan and Israel, none of whom are parties to the NPT. DPRK withdrew from the NPT in 2003, and has subsequently carried out nuclear explosive tests. South Africa joined the NPT as a NNWS in 1991. In 1993 South Africa announced it had developed nuclear weapons but had decommissioned them prior to joining the NPT. IAEA inspectors subsequently verified that the South African nuclear weapons programme had been terminated and any weapons had been disarmed and dismantled. See <https://www.iaea.org/sites/default/files/publications/magazines/bulletin/bull37-1/37105394248.pdf>.

Article III of the NPT establishes a system of safeguards under the oversight of the IAEA for verification that treaty obligations in relation to the storage and possession of materials are complied with to prevent the diversion of material from peaceful uses of nuclear energy to nuclear weapons. Article IV of the NPT provides for the development of peaceful uses of nuclear energy and encourages international cooperation in relation to NNWS developing and researching peaceful uses of nuclear energy.

The principal requirements in relation to nuclear disarmament are found in Article VI. This provides:

“Each of the Parties to the Treaty undertakes 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.”²⁴

The interpretation of Article VI has been the subject of considerable debate with some commentators suggesting that Article VI does not create any legally binding obligations and is limited to merely requiring the pursuit of good faith negotiations and does not extend to the conclusion of specific disarmament steps.²⁵ Other commentators suggest that Article VI provides for a more concrete requirement and involves an obligation to achieve a precise result, i.e. nuclear disarmament, through the pursuit of good faith negotiations.²⁶

The Comprehensive Nuclear-Test-Ban Treaty

The [Comprehensive Nuclear-Test-Ban Treaty](#) [CTBT] was adopted by the UN in September 1996.²⁷ 184 States have signed the Treaty while 167 States have ratified it, including Ireland.²⁸ In accordance with Article XIV of the CTBT, all 44 States listed in Annex II of the Treaty must ratify the Treaty for it to enter into force, which is yet to take place.²⁹ It provides for a complete ban on nuclear test explosions and includes underground tests and peaceful nuclear explosions.³⁰

²⁴ Article VI of the NPT, available at <http://disarmament.un.org/treaties/t/npt/text>.

²⁵ See C. A. Ford, “Debating Disarmament: Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons” (2007) 14 *Non-Proliferation Review* 401.

²⁶ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1. *C.J. Reports* 1996, 226, at p. 264. Available at <https://www.icj-cij.org/en/case/95/advisory-opinions>. Pietrobon suggests Article VI creates legally binding obligations and notes that it would be particularly unconscionable to allow the NWS to evade such obligations in circumstances where they have benefitted from the continued non-proliferation of nuclear weapons among the NNWS, in this way consolidating their military advantage. See Pietrobon, Note 9, at 181-182.

²⁷ See <http://www.un.org/documents/ga/res/50/a50r245.htm>.

²⁸ See <https://www.ctbto.org/the-treaty/status-of-signature-and-ratification/>.

²⁹ The following Annex II States have so far failed to ratify the Treaty: China, DPRK, Egypt, India, Iran, Israel, Pakistan and the US. Thus the CTBT is not currently in force.

³⁰ Article V of the NPT provides for the NWS to make available the benefits of peaceful nuclear explosions to NNWS on a non-discriminatory basis. Until the end of the 1980s it was believed that nuclear explosions could be used for non-military purposes such as civil engineering and extinguishing burning gas wells. Over 150 peaceful nuclear explosions were carried out by the US and the Soviet Union. For more information on peaceful nuclear explosions see Preparatory Commission for the CTBT Organisation, “Peaceful Nuclear Explosions.” [Available at <https://www.ctbto.org/nuclear-testing/history-of-nuclear-testing/peaceful-nuclear-explosions/>]

The CTBT provides for a system of monitoring that is capable of detecting nuclear explosions anywhere in the world, in order to provide immediate scientific proof of any violation of the Treaty. Although the Treaty is not yet in force, the monitoring system is operational. It was through the use of this system that the international community was made aware of nuclear test explosions carried out in DPRK in October 2006.³¹

Customary international law and nuclear weapons

Customary international law refers to international law that is developed through custom. This arises where state practice and *opinio juris*³² are the primary sources of law. This involves a general practice coming to be viewed as accepted state practice and over time, crystallising as a binding legal principle (*jus cogens*). While treaty law is only binding on the parties which ratify or accede to the provisions of the treaty³³, **customary international law is considered binding on all States.**

In 1996 the International Court of Justice [the ICJ] gave an advisory opinion as to the legality of the threat or use of nuclear weapons in response to a request from the UN General Assembly.³⁴ The Court noted that there is no specific principle of customary international law that either authorises or prohibits the threat or use of nuclear weapons, and that state practice suggests that illegality of the use of a specific weapon arises where there is a prohibition.³⁵

The Court noted that the immense heat and energy, and prolonged radiation released by nuclear weapons are unique characteristics of nuclear weapons which render them potentially catastrophic. The Court set this out in particularly stark terms, stating:

“The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet.”³⁶

The International Court of Justice

The ICJ is the principal judicial organ of the United Nations, with its seat in The Hague, Netherlands. It hears legal disputes relating to “contentious proceedings” between States which have recognised its jurisdiction.

Judgments of the court are binding. The ICJ also provides **advisory opinions** where requested by organs of the UN or specified related bodies. Advisory opinions are not binding, however, they carry persuasive legal weight. - [ICJ](#)

³¹ See 2010 Review Conference of the Parties to the Treaty on Non-Proliferation of Nuclear Weapons, “The Capacity of the Comprehensive Nuclear-Test-Ban Treaty Verification Regime” Working Paper presented by Spain on behalf of the European Union, [UN Doc. NPT/CONF.2010/WP 55 \(2010\)](#).

³² *Opinio juris* is the belief that actions taken by a State are done on the basis of a legally binding obligation.

³³ However, once a State has signed an international treaty they are obliged not to take any actions that undermine the object or purpose of that treaty. This is provided for under Article 18 of the [Vienna Treaty on the Law of Treaties, 1969](#).

³⁴ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1 *CJ Reports* 1996, p. 226.

³⁵ *Legality of the Threat or Use of Nuclear Weapons*, at p. 247.

³⁶ *Legality of the Threat or Use of Nuclear Weapons*, at p. 243.

The Court examined whether limitations deriving from the need in international law to respect and protect the environment would be sufficient to render the use of a nuclear weapon during armed conflict unlawful. In this regard the Court held:

“The Court thus finds that while the existing international law relating to the protection and safeguarding of the environment does not specifically prohibit the use of nuclear weapons, it indicates important environmental factors that are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict.”³⁷

The Court then dealt with the use of nuclear weapons and whether they were prohibited by the law of the use of force in armed conflict. The Court focused on the [Charter of the UN](#) and specifically on the prohibition on the use of force in Article 2(4) and the right to self-defence in Article 51. The Court noted that these provisions do not refer to specific weapons and that a use of force which is inconsistent with these provisions will be unlawful irrespective of the weapon used. In relation to self-defence the Court focused on the limitations of proportionality and necessity that exist, and highlighted that these limitations arise irrespective of the means of force that is employed.

Nuclear weapons and international humanitarian law

The Court went on to consider the position of nuclear weapons in relation to international humanitarian law. The Court analysed the principle of discrimination between civilian and military targets and the requirement that States refrain from using weapons that are incapable of distinguishing between civilian and military targets. The second core principle of international humanitarian law which the Court focused on was the prohibition of weapons that cause unnecessary harm and suffering to combatants. The Court noted that these fundamental rules apply to all weapons and constitute, “intransgressible principles of international customary law.”³⁸

The Court also examined the principle of neutrality and held that, like the principles of international humanitarian law, this principle is of a sufficiently fundamental character as to be applicable to all international armed conflict. While the court acknowledged that given the unique destructive capacity of nuclear weapons it would be difficult to reconcile the use of nuclear weapons with the above principles, the Court was ultimately unable to find that the use or threat of use of nuclear weapons is illegal in all circumstances. The Court cited self-defence of a State in extreme circumstances where the very survival of the State was at issue, as a possible scenario where use may be legal.

Given the difficulties which arise due to the uncertainty of the legal status of nuclear weapons, the Court highlighted the need to negotiate and bring about complete nuclear disarmament, stating:

“In the long run, international law, and with it the stability of the international order which it is intended to govern, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons. It is consequently

³⁷ *Legality of the Threat or Use of Nuclear Weapons*, at p. 243. In this regard the Court noted that environmental factors would feature when determining whether military action complies with the principles of necessity and proportionality that apply to a use of force in armed conflict.

³⁸ *Legality of the Threat or Use of Nuclear Weapons*, at p. 257.

important to put an end to this state of affairs: the long-promised complete nuclear disarmament appears to be the most appropriate means of achieving that result.”³⁹

Ireland and nuclear disarmament

Ireland has taken an active role in nuclear disarmament discussions. Ireland was heavily involved in the discussions leading to NPT. In 1958, the first of the “Irish Resolutions” was introduced to the UN General Assembly by the Minister for External Affairs, Frank Aiken. This recognised the need to prevent the spread of nuclear weapons beyond those countries which at the time possessed them. He suggested the likelihood nuclear weapons being used in war would be greatly increased if they were available to smaller nations. In his speech to the 13th Session of the UN General Assembly on the 19th September 1958, Minister Aiken noted that:

“... if general war is brought upon the world for any motive, however good or however bad, it will neither democratise nor communise it; it will annihilate it.”⁴⁰

In this speech he went on to recognise that a system of oversight would be necessary to ensure the peaceful development of nuclear technology. He also proposed that the existing nuclear powers would refrain from the proliferation of nuclear weapons to non-nuclear States. While he recognised that foregoing the development of nuclear weapons technology would involve a greater sacrifice for larger non-nuclear powers than for smaller States, he emphasised that were nuclear war to break out, nations would likely regret their failure to make the necessary sacrifices that could have prevented it. In recognition of its role in bringing about the NPT, Ireland was the first country invited to sign the NPT in 1968.⁴¹

Ireland is a member of the New Agenda Coalition [the NAC].⁴² The NAC is a group of six nations⁴³ that came together in 1998 to bring about a new agenda for nuclear disarmament. This arose in light of the failure of the NWS to meet their Article VI requirements under the NPT. The first NAC Ministerial Meeting was held on 9th June, 1998 in Dublin. This group continues to call for greater engagement by NWS with their Article VI requirements and has criticised the perceived modernisation of nuclear weapons arsenals and expansion of the role of nuclear weapons in national security policies.

Ireland is also a member of the Vienna Group of Ten [the VG10],⁴⁴ a group established to further the advancement of the “Vienna issues” in relation to nuclear disarmament. The Vienna issues include the CTBT, peaceful uses of nuclear energy, nuclear safety, security and safeguards, export controls, nuclear testing and withdrawal from the NPT. The Working Paper of the VG10 that was

³⁹ *Legality of the Threat or Use of Nuclear Weapons*, at p. 263.

⁴⁰ UN General Assembly, Thirteenth Session, (19th September, 1958) [UN Doc A/PV.751](#), at p. 39.

⁴¹ For more information on Ireland’s role in disarmament in the late 1950s and early 1960s see Catherine Manathunga, “The Evolution of Irish Disarmament Initiatives at the United Nations, 1957-1961.” *Irish Studies in International Affairs*, vol. 7, 1996, pp. 97–113.

⁴² For more information about the NAC, see <https://www.nti.org/learn/treaties-and-regimes/new-agenda-coalition/>.

⁴³ The members of the NAC are Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa.

⁴⁴ The members of the VG10 are Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden.

submitted to the to the 2018 Preparatory Committee of the Treaty on the Non-Proliferation of Nuclear Weapons raised the Vienna issues and set out a number of draft recommendations that could be adopted by the 2020 Review Conference of the NPT in relation to these issues.⁴⁵

Nuclear weapons and gender

Ireland continues to take a leading role in advancing nuclear disarmament. A key issue that has been raised by Ireland is the role of gender. In the Working Paper presented by Ireland to the 2018 Preparatory Committee of the Treaty on the Non-Proliferation of Nuclear Weapons, the issue of gender was highlighted in terms of the disproportionate effect that the use of nuclear weapons has on women and in respect of the underrepresentation of female delegates in nuclear disarmament discussions.⁴⁶ This paper summarises the scientific evidence which shows that nuclear weapons pose a disproportionately greater risk to women than to men, highlighting that women are approximately 50% more likely to develop cancer following exposure to ionising radiation.⁴⁷ The paper recommends that the humanitarian issue of the disproportionate impact of a nuclear weapons detonation on women and girls ought to be reflected in the outcome document for this NPT Review Cycle.

The paper also sets out the steps which Ireland has been taking in international fora to advance issues relating to gender and disarmament in the context of the UN Women, Peace and Security Agenda.⁴⁸ In this regard the paper highlights the need for the underrepresentation of women in nuclear disarmament to be addressed. The paper calls on States:

“... to empower, assist and sponsor qualified women participants in Nuclear Disarmament forums and to take gender diversity into account in the composition of their delegations.”⁴⁹

⁴⁵ “Addressing ‘Vienna issues’: the Comprehensive Nuclear-Test-Ban Treaty; compliance and verification; export controls; cooperation in the peaceful uses of nuclear energy; nuclear safety; nuclear security; and discouraging withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons,” Working paper submitted Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden (the Vienna Group of Ten) (Geneva, April 23 – May 4, 2018). Available at <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom18/documents/WP5.pdf>

⁴⁶ “Impact and Empowerment – the role of Gender in the NPT,” Working Paper presented by Ireland to the Preparatory Committee of the Treaty on the Non-Proliferation of Nuclear Weapons (Geneva, April 23 – May 4, 2018). Available at <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/disarmament/Gender-2018-PrepCom-WP.pdf>.

⁴⁷ As well as a heightened biological vulnerability to ionising radiation, the social effects of nuclear weapons are gendered, with studies showing that women experience different and often more severe impacts in relation to psychological health, displacement, social stigma and discrimination arising from nuclear weapons and exposure to radiation. For more information on nuclear weapons and gender see Dimmen, A.G., “GENDERED IMPACTS: The humanitarian impacts of nuclear weapons from a gender perspective” (2014) *Paper No 5 of 6* at the ILPI-UNIDIR conference Series. Available at <http://ilpi.org/publications/gendered-impacts-the-humanitarian-impacts-of-nuclear-weapons-from-a-gender-perspective/>.

⁴⁸ The women, peace and security agenda derives from [UN Security Council Resolution 1325](#). This calls for increased participation by women at all levels of decision making, greater attention in relation to the specific protection needs of women and girls in conflict and increased awareness of gender perspectives in post-conflict processes. For more information, see <https://www.peacewomen.org/SCR-1325>.

⁴⁹ “Impact and Empowerment – the role of Gender in the NPT,” Note 46, at p. 7.

Ireland played a leading role in the negotiations of the TPNW. In recognition of the leadership taken by the Irish disarmament delegation in advancing the negotiations of the TPNW, they were jointly awarded the 2017 Arms Control Person(s) of the Year award.⁵⁰

⁵⁰ The Irish disarmament delegation was jointly awarded this award alongside the delegations of Brazil, Austria, Mexico, New Zealand, South Africa and Ambassador Elayne Whyte of Costa Rica who chaired the negotiations. See https://merrionstreet.ie/en/News-Room/Releases/Ireland_wins_Arms_Control_Person_of_the_Year.html.

Treaty on the Prohibition of Nuclear Weapons

The Treaty on the Prohibition of Nuclear Weapons [TPNW] was opened for signature on the 20th September, 2017. At the time of writing, 70 countries have signed the TPNW, with 23 States having ratified or acceded to it.⁵¹ The TPNW will enter into force 90 days after 50 States have ratified or acceded to the Treaty.⁵² This section examines some of the key provisions of the TPNW. The section also sets out the international reaction to the TPNW.

Key provisions of the TPNW

This section analyses some of the key provisions of the TPNW. This section focuses on the more substantive elements of the TPNW. For that reason a number of article of the TPNW are not considered as they address more technical elements.

The Preamble

The preamble to the TPNW sets out some of the general principles and policies that inform the TPNW. The preamble specifically acknowledges the disproportionate impact of nuclear weapons on women and girls. The preamble also addresses the fact that women are underrepresented in nuclear disarmament fora and states:

*“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.”*⁵³

The preamble also makes specific reference to the NPT noting that it “serves as the cornerstone of the nuclear disarmament and non-proliferation regime.”⁵⁴

Article 1 – Prohibitions

Article 1 of the TPNW sets out a comprehensive list of prohibited activities in relation to nuclear weapons. This includes prohibitions on activities relating to the development, production, use or threat of use, testing, transfer and stockpiling of nuclear weapons. Article 1(g) is of particular significance as it provides for States Parties to refrain from allowing:

“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.”

⁵¹ See <http://disarmament.un.org/treaties/t/tpnw>. Ratification is the act by which a State signifies its intention to be legally bound by the provisions of a treaty. Ratification of a treaty arises once a State has signed the treaty and then completed the appropriate national legislative requirements. Where a State has signed, but not ratified a treaty they are obliged not to take any actions that undermine the object or purpose of that treaty. Accession is where a State has not signed a treaty, however, it formally signifies its intention to be legally bound by that treaty and follows the necessary domestic procedures to become a party to the treaty. The UN provide a glossary of terms relating to Treaty actions at https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml.

⁵² [TPNW, Article 15](#).

⁵³ [Preamble to the TPNW](#).

⁵⁴ *Ibid.*

This prohibition has been raised as problematic for countries such as Belgium, Italy, Germany, the Netherlands and Turkey, which allow for US nuclear missiles to be stationed on their territory.⁵⁵

Article 2 – Declarations

Article 2 of the TPNW requires each States Parties to declare:

- whether they have owned, possessed or controlled nuclear weapons prior to the Treaty coming into force;
- whether they currently own, possess or control nuclear weapons; and
- whether there are any nuclear weapons within their jurisdiction which is owned, possessed or controlled by another State.

Article 3 – Safeguards

Article 3 of the TPNW requires States Parties which do not possess nuclear weapons to maintain their current IAEA safeguards, and where they have not done so to bring into force a comprehensive safeguards agreement ([INFCIRC/153 \(Corrected\)](#)) with the IAEA.

Article 3 and the safeguard requirements set out in the TPNW has attracted a certain amount of criticism,⁵⁶ as it does not provide for the highest standard of verification that is set out in the Model Additional Protocol to the IAEA Comprehensive Safeguards ([INFCIRC/540](#)). It has also been suggested that the lesser verification requirements are insufficient to prevent clandestine nuclear activity and may result in the undermining of efforts to encourage States to introduce Additional Protocol agreements with the IAEA.⁵⁷

These criticisms have been answered by proponents of the TPNW on the basis that the TPNW does not allow for the downgrading of existing verification arrangements, meaning that the 134 countries that have signed up to Additional Protocol agreements would not be able to renege on their obligations merely by becoming a State Party to the TPNW.⁵⁸

Article 4 – Towards the total elimination of nuclear weapons

Article 4 sets out the disarmament requirements of nuclear weapon possessing States. Article 4(1) relates to a situation where a State Party has owned, possessed or controlled nuclear weapons after 7th July 2017 and eliminated its nuclear weapons programme prior to the TPNW coming into force. This provides for such a State Party to cooperate with a competent international authority to

⁵⁵ See Mills & Culpin, “A Treaty on the Prohibition of Nuclear Weapons” House of Commons Briefing Paper Number 7986, (9th October, 2018), at p. 4. Available at <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7986>.

⁵⁶ For example, in Sweden’s Explanation of vote (7th July, 2017), they note their disappointment at the failure to provide for the higher standard of verification and suggest it would have bolstered the credibility of the TPNW had it been adopted. See https://www.regeringen.se/48f047/contentassets/55e89d0a4d8c4768a0cabf4c3314aab3/rapport_lundin_webb.pdf, at p. 233.

⁵⁷ See C. A. Ford, “Briefing on Nuclear Ban Treaty by NSC Senior Director Christopher Ford” Carnegie Endowment for International Peace (22 August 2017), available at <https://carnegieendowment.org/2017/08/22/briefing-on-nuclear-ban-treaty-by-nsc-senior-director-christopher-ford-event-5675>.

⁵⁸ See Nysteu, Egeland & Graff Hugo, “The TPNW: Setting the record straight” Norwegian Academy of International Law (October 2018), at pp. 9-12. Available at <http://intl.no/wp-content/uploads/2018/10/TPNW-Setting-the-record-straight-Oct-2018-WEB.pdf>.

verify the elimination of its nuclear weapons programme. Such a State Party is also required to negotiate a safeguards agreement with the IAEA and at a minimum, maintain these safeguards obligations in the future.

Article 4(2) relates to a situation where a State Party which joins the TPNW while still in possession of its nuclear weapons. Such a State Party is required to immediately remove its nuclear weapons from operational status and destroy them as soon as possible thereafter, but “not later than a deadline to be determined by the first meeting of States Parties.” Such a State Party is also required to negotiate a safeguards agreement with the IAEA that is:

“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.”⁵⁹

Article 6 – Victim assistance and environmental remediation

Article 6(1) provides that States Parties must provide victim assistance to individuals under their jurisdiction that have been affected by nuclear weapons use or testing. Such assistance should include age and gender sensitive assistance, and provide for the social and economic inclusion of victims.

Article 6(2) requires States Parties to take remediation measures in respect of areas within their jurisdiction which have been contaminated by activities relating to nuclear weapons testing or use.

Article 7 – International cooperation and assistance

Article 7 provides for States Parties to provide assistance and cooperate with each other to facilitate the implementation of the TPNW. Among the areas in which cooperation is specifically provided for are:

- the provision of technical, material and financial assistance to States Parties affected by nuclear weapons testing or use;
- the provision of assistance to victims of nuclear weapons testing or use; and
- where a State Party has tested or used a nuclear weapon, that State Party is required to provide assistance to affected States Parties in relation to victim assistance and environmental remediation.

Article 18 – Relationship with other agreements

Article 18 provides that:

“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.”

Some commentators have suggested that this provision subordinates the NPT to the TPNW and in this way undermines the NPT.⁶⁰ This argument is rejected by Nysteyn, Egeland & Graff Hugo, who suggest that Article 18 does not prevent any adherence to existing nuclear non-proliferation or

⁵⁹ TPNW, Article 4(3).

⁶⁰ Newell Highsmith and Mallory Stewart, “The Nuclear Ban Treaty: A Legal Analysis”, *Survival* 60, no. 1 (2018).

disarmament treaties. They suggest that it is difficult to envisage inconsistencies arising between the NPT and the TPNW. They submit that Article 18 merely restricts States Parties to the TPNW from using other treaties as a means of avoiding their obligations under the TPNW.⁶¹

Reaction to the TPNW

This section provides a brief overview of the reaction to the TPNW examining the reaction of civil society groups, certain States Parties and the P5. In relation to examining the reasoning behind countries which reject the TPNW, this section analyses the positions of the UK and the Netherlands. The position of the UK is considered as the UK's response is demonstrative of the reaction of the P5 to the TPNW. The position adopted by the Netherlands is considered as they were the only country at the UN Negotiating Conference to vote against the text of the TPNW.⁶²

States parties to the TPNW

There are currently 70 signatories to the TPNW, with 23 countries having acceded to or ratified the treaty.⁶³ The TPNW has been ratified by three of Ireland's partners in the NAC; South Africa, New Zealand and Mexico. South Africa ratified the TPNW on 25th February 2019. The South African Minister for International Relations, Lindiwe Sisulu, upon ratification of the TPNW, stated that:

“Given its unique history, as the first country to have eliminated all its nuclear weapons, South Africa is proud to have played a leading role in this process together with a vast majority of States and members of civil society that actively contributed to the process and the adoption of this Treaty.

While we celebrate this historic achievement, we are fully aware that much work remains to be done to achieve our goal of a world free of nuclear weapons. Beyond the entry into force of this Treaty and working towards its universalisation, we will not relent in our efforts towards securing the full implementation of the commitments made by State Parties in fulfilment of their NPT obligations, particularly the nuclear disarmament obligations that have been neglected for too long.”⁶⁴

ICAN

One of the particularly noteworthy aspects of the negotiations on the TPNW was the level of engagement from international civil society groups advocating for a ban on nuclear weapons. At the forefront of these efforts was the International Campaign to Abolish Nuclear Weapons [ICAN].⁶⁵ ICAN is a coalition of non-governmental organisations in over 100 countries which promotes the

⁶¹ Nysteu, Egeland & Graff Hugo, “The TPNW: Setting the record straight.” Note 58 at p. 22.

⁶² 122 States voted in favour, the Netherlands voted against, while Singapore abstained.

⁶³ The following countries have ratified or acceded to the TPNW: Austria, Cook Islands, Costa Rica, Cuba, El Salvador, Gambia, Guyana, the Holy See, Mexico, New Zealand, Nicaragua, Palau, Panama, St. Lucia, Samoa, San Marino, South Africa, State of Palestine, Thailand, Uruguay, Vanuatu, Venezuela and Vietnam.

⁶⁴ South African Department of International Relations and Cooperation, Media Release, “South Africa deposits its Instrument of Ratification of the UN Treaty on the Prohibition of Nuclear Weapons” (25th February, 2019). Available at <https://www.gov.za/speeches/south-africa-deposits-its-instrument-ratification-un-treaty-prohibition-nuclear-weapons-25>.

⁶⁵ More information about ICAN is available at <http://www.icanw.org/campaign/campaign-overview/>.

prohibition of nuclear weapons. ICAN has spent more than a decade advocating for a humanitarian perspective to be considered in relation to nuclear weapons. ICAN received the 2017 Nobel Peace Prize for:

“... its work to draw attention to the catastrophic humanitarian consequences of any use of nuclear weapons and for its ground-breaking efforts to achieve a treaty-based prohibition of such weapons.”⁶⁶

The Netherlands

At the outset it should be noted that the Netherlands is a member of NATO and hosts US nuclear weapons on its territory. The negotiations on the TPNW were boycotted by all the nuclear weapon possessing States. The Netherlands was the only NATO country to attend the negotiations in July 2017.

The position of the Netherlands and its reasons for voting against the draft text of the TPNW are set out by Ambassador Lise Gregoire-van Haaren in the Netherland's Explanation of vote.⁶⁷ She sets out the main reasons for the Netherland's vote against the TPNW. These can be summarised as:

- the TPNW conflicts with their NATO obligations;
- the TPNW is not verifiable and adopts an outdated safeguards regime, meaning it cannot provide the security assurances that are required to bring about a nuclear-free world; and
- the TPNW sets up a competing regime to the NPT which will lead to fragmentation in disarmament efforts.

The United Kingdom

The UK is a NWS under the NPT, a member of NATO and operates an independent submarine-based nuclear deterrent. The UK did not participate in the negotiations in relation to the TPNW. Addressing the UK's non-participation in the negotiations, the UK Permanent Representative to the UN, Ambassador Matthew Rycroft, stated:

“The UK is not attending the negotiations on a treaty to prohibit nuclear weapons because we do not believe that those negotiations will lead to effective progress on global nuclear disarmament. They cannot and will not work.

The British government firmly believes that the best way to achieve the goal of global nuclear disarmament is through gradual multilateral disarmament, negotiated using a step-by-step approach and within existing international frameworks.

⁶⁶ International Campaign to Abolish Nuclear Weapons (ICAN) – Facts. Available at <https://www.nobelprize.org/prizes/peace/2017/ican/facts/>.

⁶⁷ “Explanation of vote of the Netherlands on text of Nuclear Ban Treaty” (7th July, 2017). Available at <https://www.permanentrepresentations.nl/latest/news/2017/07/07/explanation-of-vote-of-ambassador-lise-gregoire-on-the-draft-text-of-the-nuclear-ban-treaty>.

A step-by-step approach to global nuclear disarmament is what we need to build trust and confidence. It will provide for tangible steps towards a safer and a more stable world where countries with nuclear weapons feel able to relinquish them.”⁶⁸

A joint press statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France was made following the adoption of TPNW. This sets out the position adopted by these countries in relation to the TPNW and argues that the TPNW does not contribute to the development of customary international law. It states that:

“This initiative clearly disregards the realities of the international security environment. Accession to the ban treaty is incompatible with the policy of nuclear deterrence, which has been essential to keeping the peace in Europe and North Asia for over 70 years. A purported ban on nuclear weapons that does not address the security concerns that continue to make nuclear deterrence necessary cannot result in the elimination of a single nuclear weapon and will not enhance any country’s security, nor international peace and security. It will do the exact opposite by creating even more divisions at a time when the world needs to remain united in the face of growing threats, including those from the DPRK’s ongoing proliferation efforts. This treaty offers no solution to the grave threat posed by North Korea’s nuclear program, nor does it address other security challenges that make nuclear deterrence necessary. A ban treaty also risks undermining the existing international security architecture which contributes to the maintenance of international peace and security.”⁶⁹

This position was reiterated by a statement released by the Foreign and Commonwealth Office, which again emphasised the importance of addressing international security concerns that it believes require the UK to maintain its nuclear deterrent.⁷⁰

The P5

The reluctance of the P5 to engage with the TPNW was recently highlighted with the issuing of the following joint statement by the P5:

“We, the nuclear weapon States recognized by the Treaty on the Non-Proliferation of Nuclear Weapons, reaffirm our commitment to the Treaty, in all its aspects, fifty years since its signature.

This landmark Treaty has provided the essential foundation for international efforts to stem the threat that nuclear weapons would spread across the globe, and has thereby limited the risk of nuclear war. It has provided the framework within which the peaceful uses of nuclear technology – for electricity, medicine, agriculture and industry – could be promoted and

⁶⁸ Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the United Nations, on the nuclear weapons ban treaty (27th March, 2017). Available at <https://www.gov.uk/government/speeches/a-step-by-step-approach-to-global-nuclear-disarmament-is-what-we-need-to-build-trust-and-confidence>.

⁶⁹ Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons (7th July 2017). Available at <https://usun.state.gov/remarks/7892>.

⁷⁰ UK statement following the conclusion of negotiations at the United Nations on a treaty prohibiting nuclear weapons, Foreign and Commonwealth Office (8th July, 2017). Available at <https://www.gov.uk/government/news/uk-statement-on-treaty-prohibiting-nuclear-weapons>.

shared, to the benefit of humanity. And by helping to ease international tensions and create conditions of stability, security and trust among nations, it has allowed for a vital and continuing contribution to nuclear disarmament.

...

It is in this context that we reiterate our opposition to the Treaty on the Prohibition of Nuclear Weapons. We firmly believe that the best way to achieve a world without nuclear weapons is through a gradual process that takes into account the international security environment. This proven approach to nuclear disarmament has produced tangible results, including deep reductions in the global stockpiles of nuclear weapons.

The TPNW fails to address the key issues that must be overcome to achieve lasting global nuclear disarmament. It contradicts, and risks undermining, the NPT. It ignores the international security context and regional challenges, and does nothing to increase trust and transparency between States. It will not result in the elimination of a single weapon. It fails to meet the highest standards of non-proliferation. It is creating divisions across the international non-proliferation and disarmament machinery, which could make further progress on disarmament even more difficult.

We will not support, sign or ratify this Treaty. The TPNW will not be binding on our countries, and we do not accept any claim that it contributes to the development of customary international law; nor does it set any new standards or norms. We call on all countries that are considering supporting the TPNW to reflect seriously on its implications for international peace and security.

Rather, we urge all States to commit to the continued success of the NPT: to ensure compliance, to promote universalisation, to ensure the highest standards of non-proliferation, and to respond to ongoing and emerging proliferation challenges, wherever they occur. In this context our five countries reiterate our commitment to continue our individual and collective efforts within the NPT framework to advance nuclear disarmament goals and objectives.”⁷¹

⁷¹ P5 Joint Statement on the Treaty on the Non-Proliferation of Nuclear Weapons, (24th October, 2018). Available at <https://www.gov.uk/government/news/p5-joint-statement-on-the-treaty-on-the-non-proliferation-of-nuclear-weapons>.

Conclusion

The TPNW is the first multilateral treaty relating to nuclear disarmament to have been negotiated in 20 years. It provides for extensive prohibitions relating to the development, testing, producing, manufacturing, acquiring, possessing, stockpiling, transferring or receiving control over nuclear weapons or other nuclear explosive devices. The Treaty has been hailed as a breakthrough moment by its supporters, “achieved despite the opposition of the most militarised and powerful countries in the world.”⁷²

However, there remains a considerable divide as to the what impact the TPNW is likely to have on international disarmament efforts in light of the opposition to the Treaty that has been raised by the nuclear weapon possessing States and those States which rely on the doctrine of nuclear deterrence. At a time when the nuclear weapon possessing States are modernising their nuclear arsenals and with the current instability⁷³ and uncertainty surrounding the survival of Cold War bilateral treaties between the US and Russia,⁷⁴ the TPNW serves to highlight the international community’s concern at the slow pace of developments within the NPT framework in relation to nuclear disarmament.

While the TPNW is not binding on States which are not a party to the treaty, it remains an important step in achieving nuclear disarmament and reflects the attitudes of the majority of States that the acquisition and reliance on nuclear weapons is no longer acceptable. From an Irish perspective the TPNW represents a considerable success for the diplomats involved in the negotiation of the Treaty as it highlights Ireland’s role in promoting humanitarian considerations, particularly in relation to gender.

⁷² Reaching Critical Will, News Release, 7 July 2016. Available at <http://www.reachingcriticalwill.org/news/latest-news/11788-un-adopts-treaty-banning-nuclear-weapons>.

⁷³ See <https://www.independent.ie/world-news/north-america/un-warns-of-nuclear-war-risk-38140232.html>

⁷⁴ See <https://www.theguardian.com/world/2019/feb/02/russia-follows-us-in-suspending-nuclear-deal>.



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