



Bill Digest

Prohibition of Nuclear Weapons Bill 2019

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Abstract

The [Prohibition of Nuclear Weapons Bill 2019](#) enables Ireland to become a State Party to the United Nations [Treaty on the Prohibition of Nuclear Weapons](#) (2017) and gives 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. The Bill makes it an offence to carry out any of the prohibited measures set out in the Treaty and creates relevant penalties to apply where an offence is committed.

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Glossary

This section sets out a number of definitions for the purpose of this Bill Digest.

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.

Hostile purpose: is defined as for providing for where the purpose is the causing or likely causing of death, serious injury to any person, substantial damage to property or substantial damage to the environment.

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 or other nuclear explosive device: is defined as any weapon or other explosive device capable of releasing nuclear energy that is designed for a hostile purpose or for use in armed conflict. The definition also includes any weapons or device in an unassembled or partly assembled form, but does not include the means of transport or delivery of the weapon or device if the means of transport or delivery is separable from and not an indivisible part of the weapon or device.

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.

Summary

The Prohibition of Nuclear Weapons Bill 2019 [the Bill] was published by the Minister for Foreign Affairs and Trade, Simon Coveney TD [the Minister], on 23rd July 2019. A General Scheme was published by the Department of Foreign Affairs and Trade in October 2018.¹ No Pre-Legislative Scrutiny was carried out in relation to this Bill.

The purpose of the Bill is 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 stated:

“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.”²

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.

¹ Available [here](#).

² Statement by Minister Coveney on the UN adoption of a Treaty on the Prohibition of Nuclear Weapons. (July 2017). Available at <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2017/july/nuclear-treaty/>.

Table of Provisions

Section	Title	Effect
1.	Definitions	Defines a number of terms which are used in the Bill.
2.	Offences	Provides for the creation of a number of criminal offences which correspond to the activities prohibited in Article 1 of the TPNW.
3.	Offences outside State	Provides for extraterritorial effect in respect of offences committed outside the State on board an Irish ship, on board an aircraft registered in the State or the person is a member of the Defence Forces.
4.	Penalties	Provides that a person found guilty of an offence will be liable on conviction to a fine, imprisonment for life or such lesser period as determined by a court, or both.
5.	Double jeopardy	Provides that where a person has been either convicted or acquitted in respect of an offence in a place outside the State, no criminal proceedings shall be commenced for an offence under this legislation where the acts consisting of the alleged offence were those giving rise to the person's conviction or acquittal.
6.	Offences by body corporate	Provides that where offences are committed by a body corporate and are attributable to a person who is a director, manager, secretary or other officer of the body corporate, that person, as well as the body corporate, may be found guilty of an offence.
7.	Short title and commencement	Standard provision that defines the short title of the Bill and provides for commencement by Ministerial order. Commencement orders may be limited to particular provisions of the Bill or purposes.

Background

The Library & Research Service in its [L&RS Note: The Treaty on the Prohibition of Nuclear Weapons](#) examined the background to the TPNW, the core provisions of the TPNW and the reaction to the TPNW. This section reproduces some of the general background information in relation to:

- Disarmament and nuclear weapons;
- Ireland and nuclear disarmament;
- Reaction of the P5 to the TPNW.

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 2000 nuclear test explosions.³ 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.⁴

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.”⁵

³ 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.

⁴ 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/>.

⁵ Melissa Gillis, *Disarmament: A Basic Guide*, UNODA, (4th Edition, 2017) at p. 23-24. Available at <https://www.un.org/disarmament/publications/basic-guide/>.

Concerns also arise in relation to the proliferation of nuclear weapons,⁶ the susceptibility of nuclear weapon systems to cyberattacks⁷ and nuclear terrorism.⁸

The Stockholm International Peace Research Institute [SIPRI]⁹ estimated that there were approximately 13,865 nuclear weapons in 2018.¹⁰ Table 1 (below) shows the breakdown of nuclear warheads and the countries which possess them.

Table 1: Global Nuclear Warheads 2018

Country	Deployed warheads	Other Warheads ¹¹	Total Inventory
USA	1,750	4,435	6,185
Russia	1,600	4,900	6,500
United Kingdom	120	80	200
France	280	20	300
China		290	290
India		130-140	130-140
Pakistan		150-160	150-160
Israel		80-90	80-90
Democratic People's Republic of Korea [DPRK] ¹²		20-30	20-30
Total	3,750	10,115	13,865

Source: SIPRI Yearbook 2019, summary p. 11

⁶ *Ibid*, at p. 34.

⁷ 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/>.

⁸ 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>.

⁹ 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.

¹⁰ *SIPRI Yearbook 2019, Armaments, Disarmament and International Security*, Summary at p. 10. Available at https://www.sipri.org/sites/default/files/2019-08/yb19_summary_eng_1.pdf.

¹¹ "Other warheads" include operational warheads held in storage and retired warheads awaiting dismantlement.

¹² Note that the figures for DPRK are based on estimates and are not included in the total figures.

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 in 1946.¹³ This 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.”¹⁴ 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](#),¹⁵ 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.¹⁶ 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 Zones treaties.

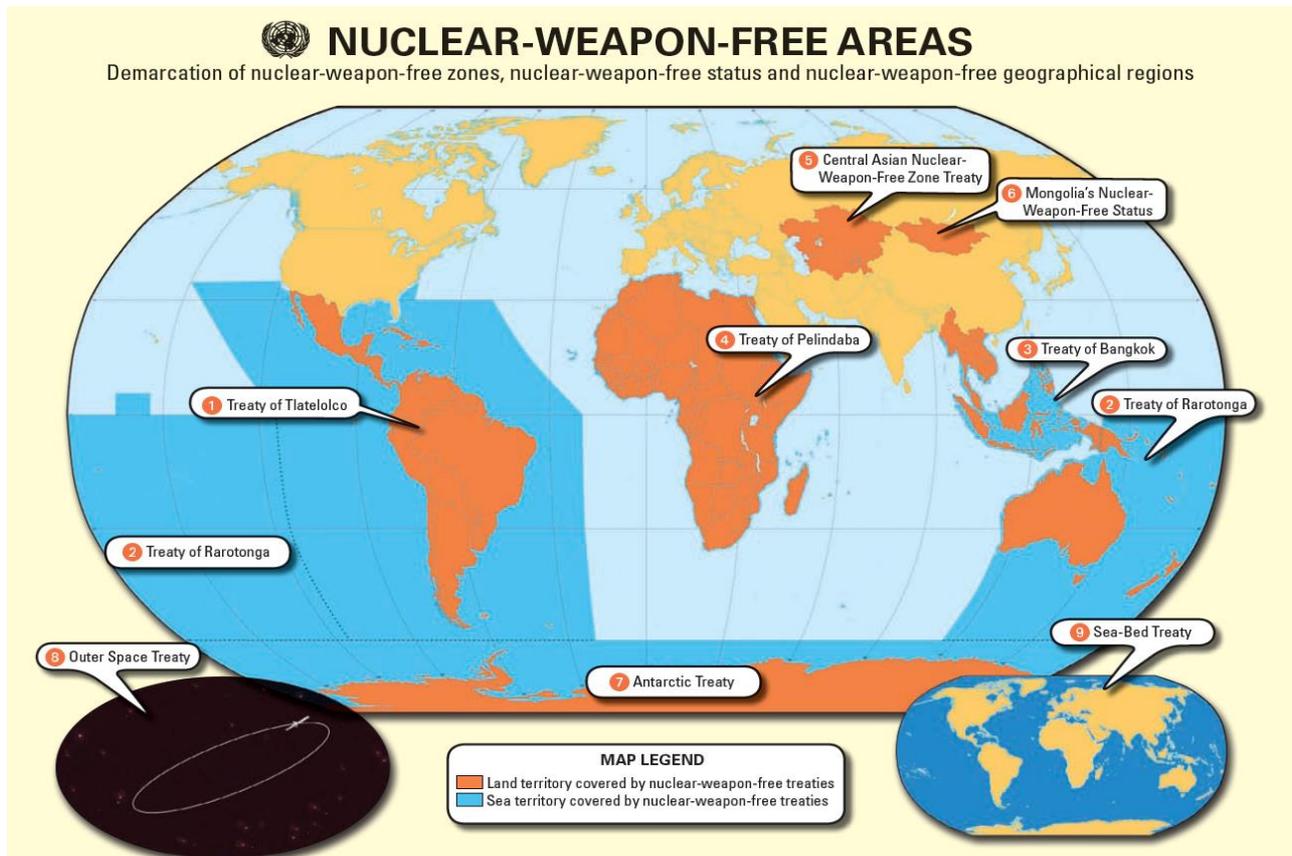
¹³ UN General Assembly (1946) “Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy” A/Res/1(I). Available [here](#).

¹⁴ *Ibid*, at paragraph 5(c).

¹⁵ 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.

¹⁶ 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 16

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 191 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]¹⁷ 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.

¹⁷ 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.”¹⁸

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.¹⁹ 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.²⁰

The Comprehensive Nuclear-Test-Ban Treaty

The [Comprehensive Nuclear-Test-Ban Treaty](#) [CTBT] was adopted by the UN in September 1996.²¹ 184 States have signed the Treaty while 168 States have ratified it, including Ireland.²² 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.²³ It provides for a complete ban on nuclear test explosions and includes underground tests and peaceful nuclear explosions.²⁴ The CTBT is given effect in Irish law under the [Nuclear Test Ban Act 2008](#).

¹⁸ Article VI of the NPT, available at <http://disarmament.un.org/treaties/t/npt/text>.

¹⁹ 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.

²⁰ *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 3, at 181-182.

²¹ See <http://www.un.org/documents/ga/res/50/a50r245.htm>.

²² See <https://www.ctbto.org/the-treaty/status-of-signature-and-ratification/>.

²³ 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.

²⁴ 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.²⁵

The TPNW

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 25 States having ratified or acceded to it.²⁶ The TPNW will enter into force 90 days after 50 States have ratified or acceded to the Treaty.²⁷

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.

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 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:

²⁵ 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 \(2010\)](#).

²⁶ 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.

²⁷ [TPNW, Article 15](#).

“... 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.”²⁸

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 1968.²⁹

Ireland is a member of the New Agenda Coalition [the NAC].³⁰ The NAC is a group of six nations³¹ 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],³² 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 submitted 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.³³

A key issue that has been raised by Ireland in the context of nuclear disarmament 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

²⁸ UN General Assembly, Thirteenth Session, (19th September, 1958) [UN Doc A/PV.751](#), at p. 39.

²⁹ 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.

³⁰ For more information about the NAC, see <https://www.nti.org/learn/treaties-and-regimes/new-agenda-coalition/>.

³¹ The members of the NAC are Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa.

³² The members of the VG10 are Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden.

³³ “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>

underrepresentation of female delegates in nuclear disarmament discussions.³⁴ 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.³⁵

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.³⁶

Reaction of the P5 to the TPNW

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

“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

³⁴ “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>.

³⁵ 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/>.

³⁶ 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.

countries that are considering supporting the TPNW to reflect seriously on its implications for international peace and security.”³⁷

³⁷ 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>.

Principal Provisions of the Bill

This section of the Digest examines the main provisions of the Bill. The Bill comprises seven sections. Section 5 of the Bill relates to the legal principle of double jeopardy.³⁸ Section 6 of the Bill relates to offences by bodies corporate. Section 7 of the Bill relates to the short title and commencement of the Bill. These are standard provisions and for that reason they are not discussed below. A short synopsis of each provision is given in the Table of Provisions (above).

Definitions

Section 1 of the Bill provides for the following definitions:

“act” is defined as including omissions.

“hostile purpose” is defined as for providing for where the purpose is the causing or likely causing of death, serious injury to any person, substantial damage to property or substantial damage to the environment.

“nuclear weapon or other nuclear explosive device” is defined as any weapon or other explosive device capable of releasing nuclear energy that is designed for a hostile purpose or for use in armed conflict. The definition also includes any weapons or device in an unassembled or partly assembled form, but does not include the means of transport or delivery of the weapon or device if the means of transport or delivery is separable from and not an indivisible part of the weapon or device.

“transfer” is defined as including the physical transfer, the transfer of title or the transfer of control of a nuclear weapon or other nuclear explosive device.

“Treaty” is defined as the TPNW.

Offences

Section 2(1) of the Bill provides for a number of offences for specified activities relating to nuclear weapons. These include activities related to the development, production, manufacture, acquisition, possession, transfer, receipt of transfer, use or threat of use, stationing, installation or deployment of nuclear weapons or other nuclear explosive devices. These are drawn from the list of prohibited activities in Article 1 of the TPNW.

Section 2 of the Bill does not contain all the prohibited activities in Article 1 of the TPNW. Absent are the references in Article 1(a) to testing and stockpiling nuclear weapons, which were both present in the General Scheme of the Bill. In relation to the prohibition on testing nuclear weapons, this activity is already covered under the prohibition on nuclear explosions set out in [section 2](#) of the *Nuclear Test Ban Act 2008*. In relation to the activity of stockpiling nuclear weapons this is likely to be covered by the prohibition on acquisition and possession of nuclear weapons in section

³⁸ Double jeopardy refers to the legal maxim *ne bis in idem*: a person cannot be prosecuted twice for the same acts.

2 of the Bill. A similar approach was taken in relation to the stockpiling of cluster munitions which is prohibited under Article 1 of the [Convention on Cluster Munitions](#).³⁹

Section 2(2) of the Bill provides that a person who assists, encourages or induces the commission of an offence under section 2(1) shall be guilty of an offence. Section 2(3) provides that any person who seeks or receives assistance to commit an offence under section 2(1) shall be guilty of an offence.

Offences outside the State

Section 3 of the Bill provides for extraterritorial effect for offences in certain circumstances. Extraterritorial effect for offences is required to provide Irish courts with the jurisdiction to hear cases where a person whilst outside the State, commits an act that would be an offence if committed in the State, and to enable such an act to be punishable as an offence as if the act was carried out in the State. Section 3(1) provides for offences under section 2 to have extraterritorial effect where:

- a) the act is committed on board an Irish ship;
- b) the act is committed on board an aircraft registered in the State; or
- c) the person is a member of the Defence Forces.

Penalties

Section 4 of the Bill provides that where offences are committed under the Bill, a person shall be liable on conviction on indictment to a fine or a maximum sentence of life imprisonment. As section 4 of the Bill only states the maximum penalty for trial on indictment and does not include any reference to penalties for summary disposal, a prosecution of an offence under the Bill will not be dealt with in the District Court except for the ordinary processing of the case up until it is sent forward for trial or sentencing to a higher court. If however, a person pleads guilty to an indictable offence⁴⁰ prior to being sent forward to the Circuit Criminal Court, Central Criminal Court or Special Criminal Court, they may, with the consent of the prosecutor, be dealt with under the sentencing parameters of the District Court, i.e. a maximum sentence of imprisonment of 12 months.⁴¹

³⁹ There is no explicit reference to stockpiling in the [Cluster Munitions and Anti-Personal Mines Act 2008](#). However, in a similar fashion to the Bill, [section 6](#) of the *Cluster Munitions and Anti-Personal Mines Act 2008* prohibits the acquisition, possession or retention of such munitions.

⁴⁰ [Section 13\(1\) of the Criminal Procedure Act 1967](#) and [section 20 of the Criminal Law \(Rape\)\(Amendment\) Act 1990](#) excludes a number of extremely serious indictable offences from the regime under section 13(2)(a).

⁴¹ See [section 13\(2\)\(a\)](#) of the *Criminal Procedure Act 1967*.

Appendix 1: 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 Israel⁴²

⁴² 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 security⁴³

⁴³ 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>



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