Backgrounder: Programme of Work

TPNW First Meeting of States Parties

15 June 2022

Agenda item 11(a). Declarations regarding the ownership, possession or control of nuclear weapons (article 2)

Summary:
Article 2 requires States Parties to submit a declaration within 30 days of joining the TPNW a declaration about its nuclear weapon status.

Article 2 of the Treaty:
1. Each State Party shall submit to the Secretary-General of the United Nations, not later than 30 days after this Treaty enters into force for that State Party, a declaration in which it shall:
   a. Declare whether it owned, possessed or controlled nuclear weapons or nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities, prior to the entry into force of this Treaty for that State Party;
   b. Notwithstanding Article 1 (a), declare whether it owns, possesses or controls any nuclear weapons or other nuclear explosive devices;
   c. Notwithstanding Article 1 (g), declare whether there are any nuclear weapons or other nuclear explosive devices in its territory or in any place under its jurisdiction or control that are owned, possessed or controlled by another State.
2. The Secretary-General of the United Nations shall transmit all such declarations received to the States Parties.

Agenda item 11(b). Universality (article 12)

Summary:
Article 12 of the TPNW requires states parties to encourage other states to join the treaty, with the ultimate goal of having every country in the world join the treaty. The points below outline potential actions that TPNW states parties might consider in implementing their Article 12 obligations.

Key points and relevant articles of the Treaty:
● Article 12 of the TPNW provides: “Each State Party shall encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty.”
● Fulfilling the obligations under Article 12 of the TPNW is crucial to the treaty’s success, because as signatures, ratifications, and accessions to the TPNW grow over time:
   ○ the prohibitions and obligations under the TPNW will protect more of humanity;
○ the treaty's norms will become more deeply entrenched and more widely observed and accepted, including even among states that do not join;
○ the imperative for states not party to join will increase; and
○ the pressure to cease maintaining and supporting nuclear weapons will increase.

● Article 5 of the TPNW provides: “Each State Party shall adopt the necessary measures to implement its obligations under this Treaty.” The text of the treaty does not provide specific guidance as to how states must fulfill their obligations under Article 12.

● The Preamble of the TPNW recognises “the catastrophic humanitarian consequences that would result from any use of nuclear weapons” and the “consequent need to completely eliminate such weapons”. In this context, the Preamble emphasises that the risks posed by the continued existence of nuclear weapons “concern the security of all humanity, and that all States share the responsibility to prevent any use of nuclear weapons.”

● Universalisation should be qualitative as well as quantitative. States parties must stress to states not party the importance both of joining the TPNW and, even and before a state joins, acting consistently with the TPNW’s provisions, and otherwise supporting the objectives and implementation of the TPNW.

Further reading


Agenda item 11(c). Deadlines for the removal from operational status and destruction of nuclear weapons and other nuclear explosive devices, and their removal from national territories (article 4)

Summary:
Article 4 of the TPNW creates a pathway for nuclear armed states and host countries to join the treaty. It explicitly establishes that states parties to the TPNW must set a deadline for the destruction of a state party’s nuclear weapons (Article 4(2)) and for the removal of a foreign state’s nuclear weapons (hosting arrangements) (Article 4(4)) at the First Meeting of States Parties.

Key points/relevant articles of the Treaty:
● Article 4(2) of the TPNW obligates states parties that continue to own, possess, or control nuclear weapons or other nuclear explosive devices upon becoming party to the Treaty to immediately remove the weapons or devices from operational status and to destroy them as soon as possible but not later than a deadline to be determined by the First Meeting of States Parties.
● Under Article 4(4), any state party with foreign nuclear weapons in its territory or in any other place under its jurisdiction or control is obligated to ensure their prompt removal as soon as possible but not later than a deadline to be determined by the First Meeting of States Parties.
● The text of the Treaty does not provide a definition for a nuclear weapon or for nuclear weapon destruction.
● The size of the nuclear armed states’ arsenals varies vastly and the time required to destroy them will differ. A study by Princeton University researchers recommends a 10 year deadline for the destruction of nuclear weapons.
A significantly shorter deadline of three months may be set for nuclear hosting states.

Further reading


Agenda item 11(d). Competent international authority, including verification (article 4)

Summary:
In addition to the destruction of their weapons, the TPNW also requires nuclear-armed states to irreversibly eliminate their nuclear weapon programs and convert all nuclear-weapons-related facilities under a verified plan negotiated between the joining state and a treaty-designated “competent international authority.” Unlike the question of deadlines, the question of competent international authority does not need to be decided upon at the first MSP and the decision could be taken once a nuclear-armed state decides to join the TPNW.

Key points/relevant articles of the Treaty:
- Article 4(1) of the TPNW establishes that “Each State Party that after 7 July 2017 owned, possessed or controlled nuclear weapons or other nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities, prior to the entry into force of this Treaty for it, shall cooperate with the competent international authority designated pursuant to paragraph 6 of this Article for the purpose of verifying the irreversible elimination of its nuclear-weapon programme. The competent international authority shall report to the States Parties. Such a State Party shall conclude a safeguards agreement with the International Atomic Energy Agency sufficient to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in that State Party as a whole.
- Article 4(6) of the TPNW establishes that “The States Parties shall designate a ‘competent international authority or authorities’ to negotiate and verify the irreversible elimination of nuclear-weapons programs, including the elimination or irreversible conversion of all nuclear-weapons-related facilities in accordance with paragraphs 1, 2 and 3 of this Article.
- According to the Nuclear Weapons Ban Monitor “The TPNW explicitly assigns some verification responsibilities to the IAEA. Several experts have suggested that the states parties to the TPNW should establish one or more new authorities in addition to the IAEA, which would cooperate with the IAEA and other relevant organisations through a division of tasks.”
- Article 4(6) of the TPNW states that, “in the event that such a designation has not been made prior to the entry into force of this Treaty for a State Party to which paragraph 1 or 2 of this Article applies, the Secretary-General of the United Nations shall convene an extraordinary meeting of States Parties to take any decisions that may be required.”
At the 1MSP, states parties should agree to pursue further discussions during the intersessional period towards developing a coherent approach on a matter related to a competent international authority or authorities, from the general obligations to specific mandate and guidance for the designation of international authorities and to elaborate on the specific requirements of extension requests related to Article 4 of the Treaty.

Further readings
- A group of experts at Princeton University and Harvard University have recommended a phased approach, with the early establishment of a two-part organisational structure, comprising an implementation support unit and a dedicated scientific and technical advisory body. This would enable substantive work to identify implementation and verification challenges and finding solutions by the time one or more nuclear-armed states join the Treaty, and the structure could then be scaled up.
- Thomas Shea provides recommendations on the TPNW verification system in this September 2020 policy brief.

Agenda item 11(e). Victim assistance, environmental remediation and international cooperation and assistance (articles 6 and 7)

Summary:
Articles 6 and 7 of the TPNW – on victim assistance, environmental remediation, and international cooperation and assistance – provide the first international framework for addressing the ongoing humanitarian, human rights, and environmental consequences of the past use and testing of nuclear weapons. Their implementation gives a crucial opportunity to better address affected peoples’ rights and needs as well as environmental contamination.

Articles 6 and 7 allow states parties to commence substantial work, with a practical impact for affected communities, including individuals and families, without the participation of nuclear-armed or endorsing states. The framework of responsibility for implementation created by Articles 6 and 7 emphasizes collective action amongst all TPNW Parties to support affected States Parties in assisting people and remediating contaminated environments. They do not focus on liability (but do not affect states’ and others’ ability to pursue redress through other channels, nor any arrangements or agreements for response already in place).

Understanding and responding to ongoing harm from nuclear weapons is not simple, because of the nature of nuclear weapons’ impacts, including from internal exposure, and how they have been used and tested (which has involved deliberate secrecy, racism and colonialism). Victim assistance and environmental remediation under the TPNW are long-term tasks to be gradually and progressively realized. Work will likely need to be phased and prioritized. The key task for the Meeting of States Parties should be to put in place strong foundations for work going forward, such as agreeing principles for implementation, initial plans of action, and developing an empowering and supportive way of working amongst states parties and other stakeholders – including centring affected communities, and particularly marginalized groups.

Key points/relevant articles of the Treaty:
- Article 6(1) requires states parties to “adequately provide age- and gender-sensitive assistance” to individuals under their jurisdiction affected by the use and testing of nuclear weapons. This assistance should be in accordance with international
humanitarian and human rights law, and may include “medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.” The language in Article 6(1) draws from standards developed under the Anti-Personnel Mine Ban Treaty and Convention on Cluster Munitions. These treaties have developed a concept of ‘victim assistance’ based on responding to and addressing the effects on individuals’ rights of the ongoing impacts of prohibited weapons.

- Article 6(2) requires states parties with areas “contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices” under their jurisdiction or control to take “necessary and appropriate measures towards the environmental remediation” of these areas.
- Article 7 on international cooperation and assistance sets out the right of states parties to seek and receive assistance, and requires those in a position to do so to provide this, including through other institutions and agencies (such as the UN and Red Cross).
- Article 6(3) emphasizes that these obligations do not affect any other agreements with or obligations of other states. Article 7(6) emphasizes that any state that has used or tested nuclear weapons that joins the TPNW has a responsibility to provide assistance to affected states parties for victim assistance and environmental remediation.
- There are currently four states parties to the TPNW and one signatory state with populations that have identified themselves as having been affected by past nuclear use or testing. These are: Algeria, Kazakhstan and Kiribati, whose present-day territories were subjected to testing; and Fiji and New Zealand, some of whose military veterans were present in the vicinity of tests or the aftermath of the atomic bombings of Japan.
- States parties should include actions to implement Articles 6 and 7 in outcome documents including:
  - Agreeing on principles for implementation;
  - Agreeing on actions for states that have assessed they have Article 6 obligations (affected states) as well as other states who can provide assistance. These should include committing to sharing information on their progress and working to develop informal reporting guidelines;
  - Committing to action for the inclusion of affected communities and other stakeholders;
  - Establishing a programme of intersessional work on the implementation of this area, including to consider creating an international trust fund for affected states.

Further reading


**Agenda item 11(f). National implementation measures (article 5)**

**Summary:**
All states parties to the TPNW are required to take ‘the necessary measures’ to implement their obligations under the Treaty. Appropriate national legislation should be adopted by all states parties that do not yet have adequate laws in place.
Key points/relevant articles of the Treaty:

- Article 5(1) of the TPNW requires that every state party take “the necessary measures to implement its obligations under this Treaty”. It applies to all of the Treaty's obligations - prohibitions as well as positive obligations.
- Article 5(2) stipulates that the duty to implement the Treaty nationally includes taking “all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress” any prohibited activity. It concerns any such activity whether it is undertaken by natural or legal persons under its jurisdiction or territory under its jurisdiction or control.
- Depending on the state’s domestic law and procedure, specific domestic legislation may need to be adopted and the regulations governing the armed forces amended.
- Some states, for example Ireland, have adopted legislation specific to the TPNW.
- Other states may have relevant existing legislation on nuclear weapons, due to prior obligations under nuclear-weapon-free zones, UN Security Council Resolution 1540, the Comprehensive Test Ban Treaty and the Nuclear Non-Proliferation Treaty. For example, the parliament of New Zealand concluded the country was “able to ratify the Treaty in good faith without the need for legislative change.”

Further reading:

- The ICRC has prepared a model law for common-law states which serves as a valuable basis for states parties to draft and enact suitable legislation.
- Nuclear Weapons Ban Monitor: The obligation to adopt national implementation measures.

Agenda item 11(g)(i). Institutionalizing scientific and technical advice for the effective implementation of the Treaty

Summary:
International treaties, including several treaties governing weapons like the Chemical Weapons Convention and Comprehensive Test Ban Treaty, have created Scientific Advisory Boards, composed of independent experts to provide scientific and technical advice to states parties and to report on developments in science and technology relevant to the treaty.

The International Panel on Climate Change, established by UN Environment and the World Meteorological Organization in 1988, has a slightly broader and more public mandate than these treaty-based advisory bodies. The IPCC prepares reports on climate change, including three working groups: Working Group I (on the physical scientific basis on climate change), Working Group II (on impacts, adaptation and vulnerability), and Working Group III (on the mitigation of climate change). The IPCC also organizes various outreach events to communicate its findings.

At the TPNW 1MSP, states parties should adopt a decision establishing a scientific advisory board or group for the TPNW, to report publicly on nuclear weapons risks and consequences and assist with implementation. States should also adopt the terms of reference for this body, which may include the following roles and functions:

- Prepare regular scientific reports on nuclear weapons and disarmament, including on the humanitarian consequences of nuclear weapons use, risks of nuclear weapons use and on relevant developments in science and technology;
Organise outreach events to communicate its findings to media, states not party to the TPNW and the broader public;

Provide scientific and technical advice to states parties on TPNW implementation as requested;

Coordinate research and reporting with scientific and non-scientific experts in states and in civil society, in particular those most impacted by nuclear weapons use and testing.

**Agenda item 11(g)(ii). Intersessional structure for the implementation of the Treaty**

**Summary:**

States will need to continue work on the treaty in between the formal meeting of states parties and review conferences and establish a coordination structure to facilitate this. The Convention on Cluster Munitions, Anti-Personnel Mine Ban Treaty and Arms Trade Treaty have established several different models of coordinating intersessional work.

The Convention on Cluster Munitions established thematic coordinators on: universalization; stockpile destruction; clearance and risk reduction education; victim assistance; international cooperation and assistance; transparency measures; national implementation measures and; general status and operation. A Coordination Committee composed of the President of the current Review Cycle, the President-designate, the previous President and the coordinators meet monthly.

The Anti-Personnel Mine Ban Treaty currently has thematic committees on: Article 5 Implementation; Cooperative Compliance; Victim Assistance and Enhancement of Cooperation and Assistance. A Coordinating Committee also comprised of the three President, current, past and future, directs the intersessional work. The Third Review Conference established that informal intersessional meetings take place once a year, and “need not be longer than two days.”

The Arms Trade Treaty has established three working groups on effective treaty implementation, transparency and reporting and treaty universalisation, which each meet at least twice in between Meetings of States Parties. The ATT Secretariat coordinates intersessional work.

The TPNW 1MSP should establish an intersessional structure of work including the creation of standing committees or thematic coordinators to meet at least twice annually. Virtual meetings may be considered. Themes addressed by these committees or coordinators should address, at a minimum, Victim Assistance, Environmental Coordination and International Cooperation and Assistance, and Universalisation. The 1MSP may also establish a Coordinating Committee to coordinate intersessional work. Interessional meetings should be inclusive of all states-parties, relevant international organisations and civil society. States in a position to do so may support the participation of other states parties via technical or other means.

**Agenda item 11(g)(ii). Complementarity of the Treaty with the existing nuclear disarmament and non-proliferation regime**
**Summary:**

The Treaty on the Prohibition of Nuclear Weapons is fully compatible with and complementary to other international nuclear weapons treaties, including the Nuclear Non-Proliferation Treaty and the Comprehensive Test Ban Treaty, as well as broader UN regimes like the Sustainable Development Goals as has been reaffirmed in numerous government studies and legal opinions.

The TPNW complements the Nuclear Non-Proliferation Treaty, including by strengthening the IAEA safeguards regime and implementing Article VI. The 2010 outcome document of the NPT welcomed attention and response to issues caused by former nuclear weapons programmes (including safety, contamination, and economic impacts), and encouraged assistance to affected states with environmental remediation (paragraphs 70/71): Articles 6 and 7 of the TPNW elaborate a holistic structure of response to the humanitarian and environmental legacies of past use and testing that is complementary to this. The TPNW complements the Comprehensive Test Ban Treaty, including by establishing an international prohibition on nuclear testing that has entered into force and creating a regime under Article 6 and 7 to assist victims of nuclear weapons testing. The TPNW addresses the UN Sustainable Development Goals, namely goals 2, 3, 4, 6, 10, 11, 13, 14, 15, 16, which are incompatible with the existence and risk of use of nuclear weapons. Furthermore, nuclear weapons are incompatible with international law more broadly, including international humanitarian law and international human rights law as a violation of the right to life.