

First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons

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Encouraging the Nuclear Weapons States to Join the TPNW

Working paper submitted by ICAN on behalf of member organization NuclearBan.US

I. Article 12: The Goal of Universality

1. The goal of States Parties to the TPNW is the total elimination of nuclear weapons. It is an obvious fact that this goal cannot be achieved without the involvement and cooperation of the existing Nuclear Weapon States.
2. Article 12 of the Treaty on the Prohibition of Nuclear Weapons makes clear that is the responsibility of all States Parties to “encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty.”
3. It is therefore of paramount importance that States Parties to the TPNW take seriously their engagement with the Nuclear Weapons States, with the goal of encouraging them to sign, ratify and implement the Treaty.

II. Article VI Obligations Under the Non-Proliferation Treaty

1. Article VI of the NPT commits all States Parties to that Treaty “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.”
2. The UK Minister for Disarmament at the time, Lord Mulley, spelt out for delegates at the NPT negotiating conference what the Nuclear Weapons States understood by the Article VI commitment: “As I have made clear in previous speeches, my government accepts the obligation to participate fully in negotiations required by [NPT] Article VI and it is our desire that these negotiations should begin as soon as possible and should produce speedy and successful results. There is no excuse now for allowing a long delay to follow the signing of this treaty.”¹
3. In their Advisory Opinion of 8 July 1996, the International Court of Justice made absolutely clear that Article VI of the NPT was to be understood as “an

¹ See T. Wallis, *Disarming the Nuclear Argument*, Luath Press, 2018, pg. 77.

obligation to pursue in good faith *and to conclude* negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”

4. Included in the final document of the 2000 NPT Review Conference was “an unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties are committed under Article VI.”

5. It is therefore an existing obligation of the Nuclear Weapons States to accomplish the total elimination of their nuclear arsenals, which is likewise the undisputed goal of the Treaty on the Prohibition of Nuclear Weapons.

III. NWS Should Be Encouraged to Sign the TPNW in Fulfilment of Article VI Obligations

1. Signing a treaty is not the same as ratifying or acceding to it, but only the first step in that process. Signing the TPNW is nothing other than a political commitment to the goals as set out in the Treaty and a promise to abide by the terms of the Treaty. That promise is only implemented once the Treaty enters into force for that State, 90 days after being ratified.

2. There is an understanding in international treaty law that a State which signs a treaty will not engage in any activities that undermine the treaty or their adherence to it prior to ratification. This means that a State signing, but not yet ratifying, a treaty such as the TPNW would be expected to take steps consistent with their intention to ratify and implement the treaty.

3. Since the goal of the TPNW is not inconsistent with the goal of Article VI of the NPT, however, *signing* the TPNW does not commit a State to an obligation it has not already made as a State Party to the NPT; that is, the obligation to accomplish the total elimination of its nuclear arsenal.

4. All Nuclear Weapons States that are also signatories to the NPT should therefore be encouraged to sign the TPNW as a re-affirmation of their “unequivocal undertaking” to achieve the goal of eliminating all nuclear weapons, in accordance with Article VI of the NPT.

IV. Opening Up the Space Between Signing and Ratifying

1. There is no stated or theoretical time period by which a State must ratify a treaty after signing it. It must be acknowledged that some states can take many years to ratify some treaties, and that some treaties are *never* ratified despite being signed.

2. The period between signing and ratifying the TPNW is a crucial period during which Nuclear Weapon States could potentially negotiate and/or engage with each other diplomatically prior to drawing up a legally-binding and time-bound plan for the elimination of their nuclear arsenals in accordance with Article 4 (2).

3. This period could result in mutual steps being taken and verified prior to ratification of the TPNW, such that the disarmament was accomplished in accordance with Article 4 (1), prior to ratification and prior to entry into force of the treaty. But it should also be encouraged that NWS could use this period between signing and ratifying the TPNW to reach agreements of one kind or another that would be implemented *after* ratification and entry into force of the treaty.

4. Article 4 (2) stipulates that the legally-binding, time-bound disarmament plan for a State that still has nuclear weapons must meet the approval of the existing States Parties. It does not, however, explicitly preclude *a priori* the possibility of a plan that links the actions of one State Party to actions taken by another State Party, so long as this meets the approval of the other States Parties according to the agreed rules of procedure.

5. While it might be preferable in some circumstances that a State joins the TPNW having already disposed of its nuclear weapons in accordance with Article 4 (1) of the TPNW, Nuclear Weapons States should be encouraged to join the TPNW by first signing the Treaty and then negotiating a mutual and verifiable disarmament plan with other Nuclear Weapons States prior to ratification.

6. Encouraging NWS to sign the TPNW first and then negotiate with other NWS prior to ratification would bind these States to the TPNW at an earlier stage and thus provide an added incentive for all remaining states to also join the TPNW.

V. Pathway to Disarmament by a Nuclear Weapon State as Described in Article 4 (2)

1. The first step for a Nuclear Weapon State that has joined the TPNW while still possessing nuclear weapons is to “immediately” remove these weapons from operational status, as described in Article 4 (2). This would be an absolute requirement no matter what other negotiations might or might not produce in terms of an agreed plan.

2. The second step would then logically be to make the required declaration within 30 days of entry into force, as defined in Article 2 (1) of the TPNW, whereby a State Party must enumerate any nuclear weapons under its control. (This step is not currently mentioned as part of the Article 4 disarmament process but is chronologically required ahead of the next step.)

3. Within 60 days of entry into force, the State Party must then submit its legally-binding, time-bound plan for the verifiable and irreversible elimination of its nuclear weapons. This is where the scope exists for implementing an agreement that could be negotiated among Nuclear Weapons States prior to ratification. The agreement could, for instance, spell out a series of steps to be taken by each Nuclear Weapon State in lock-step with each other, such that all Nuclear Weapons States are disarming at an equivalent rate or with the same end-date for achieving elimination of their arsenal.

4. The implementation of the disarmament plan would then take place over an agreed period of time. Allowing for comprehensive and intrusive verification of the destruction of nuclear weapons and their delivery systems, as in other recent disarmament agreements, would provide important reassurance that no party is being taken advantage of during this process.

5. And prior to completion of the disarmament plan, a safeguards agreement would have to be negotiated with the IAEA to provide credible assurance of the non-diversion of any remaining fissile materials. Again, this would be crucial for maintaining confidence in the whole disarmament process.

6. At each stage of this process, the State Party must submit reports to Secretary-General of the United Nations and/or to the assembled States Parties indicating its progress in fulfilling its obligations under Article 4.

7. The more concrete and clear the pathways for eliminating their nuclear arsenals can be made, the more likely are the Nuclear Weapons States to take the Treaty seriously and to begin the process of accession.

VI. Summary of Recommendations

1. All States Parties should be encouraging the Nuclear Weapons States, at all international fora and through all available diplomatic channels, to join the TPNW at the earliest possible date.
2. States Parties to the TPNW should be encouraging all State Parties to the NPT, and especially the NWS, to sign the TPNW as a reaffirmation of their existing NPT obligations under Article VI.
3. Nuclear Weapons States should be reminded of the two pathways to disarmament outlined in Article 4(1) and 4(2) of the TPNW. Joining the TPNW after having eliminated their nuclear arsenal, as in Article 4 (1), is clearly one option. However, signing the Treaty and then proceeding to disarm, as in Article 4 (2), will likely lead to a more rapid process of universalization and elimination, and is therefore to be preferred.
4. States Parties should encourage the NWS to use the period between signing and ratifying the TPNW to negotiate mutually agreeable disarmament plans with other NWS, and to set up rigorous verification protocols for monitoring each other's progress in implementing the disarmament process.
5. States Parties should initiate discussions now with the Nuclear Weapons States in order to flesh out the steps and protocols that would be needed for NWS to join the TPNW and eliminate their nuclear arsenals.