

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

Distr.: General  
8 June 2022

English only

Vienna, 21–23 June 2022

## **Fulfilment of Obligations under Article 5 “National Implementation” Essential to Achieve Goals of TPNW**

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

### **I. Responsibilities of a State Party Under Article 5**

1. The Treaty on the Prohibition of Nuclear Weapons enumerates a set of prohibitions and obligations that apply to States, or more specifically, to the States Parties who have ratified or acceded to the treaty.
2. In order for those prohibitions and obligations to apply to individuals and corporate entities *within* those States Parties, the terms of the treaty itself must be translated into the relevant legal language applicable to persons and not States.
3. Article 5 of the TPNW therefore sets out the obligations of all States Parties to:
  - (a) adopt the necessary measures to implement its obligations under this Treaty;
  - (b) take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Treaty undertaken by persons or on territory under its jurisdiction or control.
4. The means by which States can hold each other accountable for any violations of this, or of any other, treaty are limited in comparison with the power which States have to hold their own citizens and corporate entities within that State accountable to the laws of that State.
5. It is therefore essential to the upholding of international law, and of treaties such as the TPNW, that States hold their own citizens and corporate entities responsible for implementing the terms of the treaty and hold them directly accountable for any violations of it.
6. And to demonstrate the seriousness of this treaty and the importance of adhering to it, it is important that States Parties define the penalties for violations of the treaty taking place under their jurisdiction or control, as stipulated in Article 5 (b).

## II. National Implementation is Critical to the Eventual Elimination of Nuclear Weapons

1. The preamble to the TPNW highlights the catastrophic humanitarian consequences that would result from any use of nuclear weapons. It recognizes that their complete elimination remains the only way to guarantee that nuclear weapons are never used again under any circumstances.
2. It must therefore remain the goal of all States Parties to the TPNW to work for the complete elimination of nuclear weapons, even when they themselves are in full compliance with their treaty obligations.
3. Even where there is little to no possibility of anyone at any time violating the terms of the TPNW within a particular State, enacting national legislation to penalize any violations of the treaty is a measure of the seriousness and importance with which a State Party takes their overall commitment to the complete elimination of nuclear weapons.
4. Furthermore, the continued existence of nuclear weapons is not solely in the hands of States. The development, testing, production, stockpiling, transfer, stationing and deployment of nuclear weapons involves a great many individual persons and corporations. Many of these persons and corporations currently operate freely throughout the world, with unfettered access to financing and other forms of assistance from within States Parties to the TPNW.
5. The prohibition against all forms of assistance, as stipulated in Article 1(e) of the TPNW, is especially relevant at the sub-national level and can only be fully adhered to by a States Party by holding individuals and corporate entities under their jurisdiction or control accountable through enactment of national legislation.

## III. Recommendations for States Parties

1. All States Parties should consider adopting national legislation to meet their Article 5 obligations, as set out by the ICRC in its “Model law for the treaty on the prohibition of nuclear weapons” (<https://www.icrc.org/en/document/model-law-treaty-prohibition-nuclear-weapons-0/>).
2. In translating the TPNW into national legislation, States Parties should ensure that the prohibitions and obligations set out in TPNW apply to *persons* and to *bodies corporate*, including “directors, managers and other officers” who may be found guilty of an offense on behalf of a body corporate, in line with the ICRC model law.
3. When drafting national legislation, States Parties to the TPNW should define specific penalties for any violations of the treaty taking place under their jurisdiction or control (these are not defined in the ICRC model law).
4. States Parties should consider applying the maximum possible penalties for violations of the law, as set out, for example, in Ireland’s “Prohibition of Nuclear Weapons Act 2019.” The maximum penalty for a person found guilty of an offense under the Act is “imprisonment for life” although the court may determine a lesser term of imprisonment and/or a fine of undefined amount. (<https://www.irishstatutebook.ie/eli/2019/act/40/enacted/en/print.html>)

5. All States Parties should commit themselves to a date by which they will have implemented their Article 5 obligations in the form of national legislation.

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