

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

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### Agenda item 11 (d)

Consideration of the status and operation of the Treaty and other matters important for achieving the objectives and purpose of the Treaty: Competent international authority, including verification (article 4)

### **Designation of a Competent International Authority/Authorities**

#### **Working paper submitted by Brazil and Mexico in their capacity as co-facilitators**

#### **I. Introduction**

1. Article 4 of the TPNW, together with Articles 1, 8 and 12, is the fundamental precept that ensures this legal instrument as a disarmament treaty and part of the broader disarmament legal architecture.
2. The fulfilment of the obligations under Article 4 and the efforts towards its implementation will raise fundamental political considerations and be subject to strict scrutiny. Therefore, they must be approached with due care and attention in a manner that is fully informed by thorough scientific and technical advice.
3. To achieve its disarmament goal, the TPNW envisages the designation of a competent international authority or authorities (IA(s)), with particular negotiation and verification mandates. These reflect the awareness of the TPNW's negotiators that implementing Article 4 is a substantial endeavour that should be undertaken in a considered and holistic manner.
4. As suggested by Article 4.6, there is no requirement for designation of an IA(s) by MSP-1 or until entry into force of the Treaty for a State Party to which Article 4.1 or Article 4.2 applies. Therefore, in this early stage of implementation of the Treaty, there is a window of opportunity for further reflection and work on developing such a mechanism with the input of State Parties, relevant scientific and technical input, and without the process being rushed, pending the entry into force for a State that owns, possesses or controls nuclear weapons and other explosive devices (4.2) or owned, possessed or controlled nuclear weapons or other nuclear explosive devices and eliminated its nuclear-weapon programme, prior to the entry into force of this Treaty (4.1).

5. As the responsibilities of the IA(s) are related to the fulfilment of the Article 4 obligations, there must be a prima facie determination that whatever the particularities of such functions, they are achievable within the deadline to be decided in accordance with Article 4.

6. It is also essential to allow for the adequate consideration of any decision concerning the designation of the competent international authority/authorities. This is consistent with the intention of the negotiators of the TPNW, as the Treaty provides for an extraordinary meeting of State Parties if no decision on this issue has been taken before a State referred to in Article 4 becomes a party.

7. The MSP-1 should capture the understanding by the States Parties on the need to conduct sufficient preparatory work, starting from the MSP-1 and continuing intersessionally and even beyond, to ensure a well-grounded and well-structured approach to the designation of competent authority/authorities.

## **II. The obligations under Article 4 of the TPNW with regard to competent international authority/authorities**

8. Article 4 of the TPNW establishes obligations towards the total elimination of nuclear weapons, including verifying the prior irreversible elimination of nuclear weapon programs (post 7 July 2017), and the immediate removal from operational status and time-bound destruction of nuclear weapons and other explosive devices.

9. To achieve this goal, Article 4 establishes the need to designate a IA(s) to fulfil certain specific tasks, which shall be submitted for approval of the meeting of States Parties or Review Conference.

10. In particular, Article 4 identifies the following tasks for the designated competent international authority/authorities:

(a) Negotiate with each State Party that owns, possesses or controls nuclear weapons or other nuclear explosive devices when joining the Treaty, a legally binding, time-bound plan for the verified and irreversible elimination of that State Party's nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities.

(b) Submission of the legally binding, time-bound plan to the subsequent meeting of States Parties or review conference, whichever comes first, for approval in accordance with its rules of procedure.

(c) Cooperate with any State Party that after 7 July 2017 owned or controlled nuclear weapons or other nuclear explosive devices and eliminated its nuclear-weapons programme, including the irreversible conversion of all nuclear-weapons related facilities, prior to the entry into force of the Treaty for it, for the purpose of verifying the irreversible elimination of its nuclear weapon programme an report to the States Parties.

(d) Verify the irreversible elimination of nuclear-weapons programmes, including the elimination or irreversible conversion of all nuclear weapons-related facilities.

11. While Article 4 is clear with regard to the functioning of the IA(s) as a negotiating and reporting body and as a verification mechanism, it does not give further guidance for the implementation of a States Party's obligations. Moreover, Article 4 does not provide specificities about the negotiating competence, reporting requirements or about the accountability and verification capabilities of the Authority.

12. We should consider this lack of detail by the TPNW to be a virtue, as it gives flexibility and adaptability to the Meetings of States Parties and Review Conferences to decide on how to operationalize these general obligations. It leaves open alternatives for deciding how best to achieve them (e.g., whether different types of IA(s) should be designated according to specific tasks, or whether a single IA(s) should be designated to fulfil all relevant tasks).

### **III. Incremental approach with regard to the designation of the competent international authority/authorities.**

13. In view of the understanding that no specific decision on the designation or defined mandates of the IA(s) should be taken at the MSP-1, the TPNW State Parties should establish an incremental approach with regard to the designation of the IA(s)<sup>1</sup>, guided by the principles of practicality, transparency, legitimacy and effectiveness.

14. This incremental approach needs to be well-grounded in current realities, including resource constraints, and properly structured inter-sessional work from the MSP-1 onwards. There should be reports to the MSP-2 on the progress made, with a view to continuing the discussion, as needed, towards the adoption of an appropriate mechanism as soon as feasible.

15. States should seek to ensure that the IA(s) will perform its functions in accordance with the mandate assigned by the Treaty (i.e., be accountable to the TPNW MSP and states-parties) and will benefit from further development of shared understanding of the scientific and technical challenges involved in the effective implementation of the disarmament provisions of the Treaty.

16. This approach is consistent with the lessons and good practices drawn from other processes of institutionalization of disarmament bodies derived from treaties (e.g., APMBC, CCM, BWC, CWC), while taking into account the particularities of each regime.

### **IV. From general obligations to specific mandate: guidance for the designation of competent international authority/authorities**

17. As previously stated, there is a need for TPNW States Parties to translate the general obligations that are in the treaty into a specific mandate and guidance vis-à-vis the designation of the IA(s).

18. This implies assessing what is required for the authority to act in an accountable way on behalf of the TPNW States Parties to effectively fulfil its duties of negotiation and verification.

19. There is also a need to define how the IA(s) should relate to TPNW decision-making processes, in particular the Meetings of States Parties and Review Conferences.

20. Among the issues that will require further consideration in the context of any Article 4-related process are the following:

<sup>1</sup> Tamara Patton, Sebastien Philippe, and Zia Mian, "Fit for Purpose: An Evolutionary Strategy for the Implementation and Verification of the Treaty on the Prohibition of Nuclear Weapons", *Journal for Peace and Nuclear Disarmament*, volume 2, issue 2, 2019, pp. 387-409, <https://www.tandfonline.com/doi/full/10.1080/25751654.2019.1666699>

***Clarification of the terms of the relevant Article 4 obligations***

21. The IA(s) is envisaged as the international authority to oversee the implementation of Article 4 for the joining state and its many aspects, including reporting, negotiating and verifying.
22. States Parties should discuss details of the mandate of the IA(s) and focus on providing guidance for its activities by identifying the necessary capacities for it to effectively fulfil its reporting, negotiation and verification mandates. They should also discuss how it should relate to TPNW decision-making processes.
23. There has to be a detailed analysis of what the term “designate” encompasses. By using this term rather than “establish”, the TPNW gives sufficient latitude to States Parties flexibility to determine whether there is a need to establish a new agency, whether the Treaty can make use of the verification capabilities of existing entities, or whether it can adopt a hybrid model.
24. With regard to the negotiation and verification mandates of the IA(s), there needs to be an understanding of the purpose and objective of each of these mandates and the specific elements necessary for their fulfilment.
25. Nonetheless, there should be clarification on the mandate of the authority and its difference from other existing mechanisms related to nuclear verification and disarmament. In that regard, there should be a clear indication of the role of the IA(s) in its different functions and competences.
26. On issues of substance, there should be a discussion on whether it will be necessary to define specific terms used in Article 4. On this issue, there might be important precedents in other disarmament treaties (e.g., in the framework of the NPT there has never arisen a need to define nuclear weapons).

***Negotiation***

27. With regard to negotiation mandate, there is a strong relationship with the model of verification that is agreed upon. The specificities of the negotiation mandate will need to be guided on substance on what will be the verification process to be followed.
28. The negotiating mandate must allow for a twofold capacity: to negotiate the legally binding, time-bound plan with the joining state; and to submit that plan to the States Parties for approval.
29. The first part would need to determine how the IA(s) will mobilize the technical and diplomatic capacities to engage with the joining party to elaborate, negotiate and finalize the plan required on Article 4.2, based on the concept of cooperative transparency, which ensures the irreversible, verifiable and transparent elimination of nuclear weapons. Likewise, a process must be determined on how the plan will be submitted by the IA(s) for approval of TPNW State Parties, which may include intermediary steps to justify the terms of the plan and ensure the effectiveness of the process. Both tasks will require a specific decision-making structure that allows for the elaboration of the plan and for its submission to States Parties. There should be consideration for this capacity, as well as for the dialogue to be maintained between the IA(s) and the States Parties, as the plan is discussed and assessed.
30. Although the approval of the plan falls within the exclusive competence of States Parties, there should be consideration of the negotiation capabilities that will be delegated to the IA(s), which will be responsible for designing and submitting the plan, as well as for providing inputs and feedbacks about it to States Parties. Therefore, the structure of the Authority must be compatible with this capacity, and be designed in accordance with the requirements set by States Parties for the fulfilment of obligations under Article 4.

### *Verification*

31. On the particular issue of verification, discussions should envisage verification from a “cooperative transparency” approach, rather than from the top-down “managed compliance” approach based on retaining nuclear weapons and capabilities that guides strategic reduction arms control treaties amongst certain of the nuclear-armed States.

32. The discussions likely need to determine what particularities or differences cooperative transparency implies for nuclear disarmament verification, and which complementarities or incompatibilities in these approaches should be considered. This new perspective will demand significant expert input, including from existing verification authorities.

33. There needs to be a clear identification of the specific requirements for verifying the elimination/dismantlement/conversion of a nuclear weapons programme, as well as to determine if the specific oversight of the execution of the elimination plan is a role for the IA(s). It will be necessary to identify which of the measures of verification can be carried out by existing entities and which might require any new structure/organisation/etc. IA(s)

34. Eventually, the discussions could potentially develop a model that reflects distinctions between the specific aspects of verifying capabilities, such as accounting, elimination/conversion, and safeguarding, with attention to fissile materials and the irreversible elimination of nuclear weapon programs.

35. If a model of cooperation and division of labour with other relevant disarmament verification organizations is adopted, there should be attention to the guidelines and limits for the IA(s) to perform its functions, including negotiating, without compromising its mandate and all other Article 4 requirements.

36. Therefore, an incremental approach would discuss, first, the nature of the verification capability, and how it will be performed by the designated Authority; second, there should be consideration of the extent and specificities of the mandate, with due regard to the provisions of Article 4 and concerns relating to non-proliferation and confidentiality; third, the structure of the IA(s) should be discussed, with due regard to the aforementioned nature of the Authority and the extent of the mandate.

37. There should be a clear understanding of the distinction between the mandate of the competent international authority/authorities under Article 4, and the requirements envisaged for those State Parties to whom this article applies to 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.

## **V. The role of the IA(s) with regard to the institutionalization of the TPNW**

38. It will be important also to envisage the institutionalization of the TPNW and the relationship between components thereunder, in particular the interplay between the IA(s), the Scientific Advisory Group, the Meeting of States Parties/Review Conferences and an eventual Implementation Support Unit. Discussions should also consider the relationship between an IA(s) and the Scientific Advisory Group, and

between the IA(s) and the MSP/RevCon. Interaction with other entities (vg. through an ISU or directly by the IA(s)) should also be discussed.

39. Likewise, there should be debate on the relationship between the IA(s) and an eventual ISU and the Scientific Advisory Group. Attention should be given to different structural options, to determine if they could be separate institutional structures or form part of the IA(s).

40. Discussions on institutionalization of the TPNW and the interplay between SAB and IA(s) should bear in mind the issues pertaining to verification tasks that will be assigned to the IA(s), including the development of capabilities, methods and procedures.

41. These discussions should work on the parameters under which the IA(s) will perform its activities, including the verification tools and capabilities that would be consistent with its mandate, especially in relation to, if need be, of handling sensitive material, including classified information, and preserving confidentiality while ensuring the fulfilment of Article 4 obligations.

## **VI. Relationship of functions assigned to IA(s) under the TPNW with verification tasks already provided for under other international frameworks of disarmament**

42. The text and the preparatory work of the TPNW envisaged that the designation of a competent international authority should not operate in a vacuum, but rather consider the activities currently carried out under existing disarmament and non-proliferation entities, and their complementarity with the obligations established under the TPNW.

43. On substantive aspects of the work of the IA(s), the TPNW's State Parties might benefit from information, discussions and findings regarding nuclear disarmament verification in other United Nations fora (e.g., GGE to further consider nuclear disarmament verification issues).

44. Additionally, they might explore cooperation and possible productive relationships with other existing international instruments and organizations (e.g. IAEA, CTBTO, OPANAL, ABACC, etc). There should be a careful balance with established treaties and institutions, so as to avoid constraints due to the existing instruments hierarchies which shape relations between NWS and NNWS.

45. There should be an understanding of the specific tasks related to verification that existing instruments and organizations are able to perform in accordance with Article 4, to ensure a process that builds confidence, to ensure a collaborative process that builds shared confidence and demonstrates the renunciation of nuclear weapons and the elimination of nuclear weapon programs by a state that owned, possessed or controlled nuclear weapons or other nuclear explosive devices.

46. Complementarities might be explored between the TPNW and other existing frameworks (e.g. the IAEA Statute allows safeguards to be applied at the request of a State to “any State’s activities in the field of atomic energy” or “under a relevant bilateral or multilateral arrangement”; the CTBT enables the CTBTO to make “cooperative arrangements with other international organizations” and the right for States Parties to “consult, directly among themselves, or through the CTBTO or other appropriate international procedures, including procedures within the framework of the UN, on any matter relating to the object and purpose of the CTBT”.)

## V. Draft Decisions, recommendations and actions

47. It is thus recommended that the 1MSP:

- (a) Invite States Parties to each designate within 60 days a national contact point to take part in the intersessional work with regard to the designation of the IA(s).
- (b) Establish an informal intersessional working group towards the designation of the IA(s). Participation of representatives of the Scientific Advisory Group, and participation of relevant agencies, think tanks (e.g. UNIDIR), civil society organizations, ICRC, academia and other stakeholders should be encouraged in the working group, as appropriate.

48. Use the intersessional working group as a venue to, inter alia:

- (a) Pursue discussions towards developing a coherent approach on IA(s)-related matters, from the general obligations to specific mandate and guidance for the designation of competent international authority/authorities, with particular focus on the following aspects:
  - clarification of specific terms under Article 4, as deemed necessary;
  - the IA(s)'s negotiation and verification mechanisms that are thoroughly grounded in science advice and relevant policy and reflect the principles, goals and objectives of the TPNW;
  - The institutionalization of the IA(s) into the formal structures of the TPNW.
- (b) Identify specific technical aspects of verification on which input is to be sought from the Scientific Advisory Group, considering discussions in other fora, such as the GGE on nuclear disarmament verification.