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

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International Law and Nuclear Disarmament: How complementary instruments made a difference in an NWFZ

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I. Introduction

1. Even covering some aspects of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, more known as the Treaty of Tlatelolco, this article analyzes other instruments and structures that contribute to the success of such Nuclear Weapon Free Zone (NWFZ). This international instrument makes Latin America and the Caribbean the first nuclear-weapons-free zone in a populated area.
2. Covering the entire region with 33 States Parties, it is essential to note that the Tlatelolco Treaty became universalized only on October 23rd, 2002. When Cuba ratified it, the Tlatelolco Treaty became universalized after opening for signatures on February 14th, 1967. As interlinked legal regimes, it is relevant to note that all member States are also parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).
3. This legal architecture becomes interesting when we see the emergence of multilateral and bilateral organizations that reinforce each other to make a successful case for nuclear prohibition. Due to this, it is an excellent contribution to the newest regime of the Treaty on the Prohibition of Nuclear Weapons (TPNW) that faces 2022 its first meeting of States Parties in Vienna, Austria.
4. The current geopolitical scenario of international relations affects the aims for a sooner elimination of nuclear weapons and the objective for less investment in weapons. With the armed conflict of Russia's invasion of Ukraine, it is possible to see the inauguration of a new atmosphere of relations with a multicentric world instead of the bipolar scenario of the last part of the previous century.
5. While it is recognized as a significant development in international humanitarian law, TPNW remains a challenge to the dynamics of its implementation as the international community puts pressure on the nuclear-armed States. These different postures are also being challenged by the Russian aggression over Ukraine, following

COVID-19 measures, as more nationalist and militarist perspectives are growing – especially in Europe.

6. The use and threat of use of nuclear weapons have its chances increased in 2022, and the reaction of those against those weapons also has raised their voices. The First Meeting of States Parties will have to deal with different challenges that, among others, will result in its core objective of prohibiting and eliminating nuclear weapons.

II. A complex legal architecture

7. It is important to note that nuclear disarmament cannot be devoted to only a few instruments and contexts. It has not been achieved yet, as an example. The complexity of the international and national political agendas was consistently replicated in its legal frameworks, either domestic or international. Of course, we can agree on two relevant episodes. The first one, the Manhattan Project, results in the development of the first nuclear weapons and then the use of such weapons in Hiroshima and Nagasaki.

8. The urgency in dealing with the catastrophic consequences of nuclear weapons made different processes and instruments deal with the threats of these weapons. Unfortunately, at the same time, many States presented their concerns and efforts to avoid its existence, while others were engaged in the opposite direction.

9. Many efforts have been made since the detonation of two US bombs in the Japanese territory in 1945, of simultaneous and/or different process and/or legal approaches – since statements and declarations to international binding instruments. In 1957, the International Atomic Energy Agency (IAEA) was established after years of negotiation since 1953's efforts based on the "Atoms for Peace" proposal from the US president Mr. Eisenhower.

10. A few States imposed the emerging political concept of linking nuclear weapons and deterrence to disfavor the entire planet. Part of the results of this political perspective gained the status of international norm under the idea of non-proliferation by 1968 when the final agreement on the NPT text. This treaty is based on three pillars: non-proliferation, disarmament, and peaceful use of nuclear energy. There is a consensus that such a treaty remains with a lack of accomplishment of the disarmament pillar as the nuclear-armed States are not moving on their article VI obligation toward the total elimination of nuclear weapons.

11. The prohibition of nuclear weapons we see nowadays covering Latin America and the Caribbean under the Tlatelolco Treaty started with the joint declaration in 1963 of five Latin-American presidents on behalf of their States: Mexico, Bolivia, Brazil, Chile, and Ecuador¹. This initiative convened several meetings among the Latin American States simultaneously with the negotiations that were going on internationally regarding the NPT.

12. The Preliminary Meeting on Latin American Denuclearization was held in 1964 in Mexico City. Following its objective, it created a Preparatory Commission for the Latin American Denuclearization with a mandate to analyze the several aspects of achieving a nuclear-weapons-free zone. In 1967 the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean was well recognized as the Tlatelolco Treaty. It was adopted in the neighbor Tlatelolco within Mexico City.

13. It was only in 1969, also in Mexico City, that the Agency for the Prohibition of Nuclear Weapons (OPANAL, acronym in Spanish to Organismo Para la Proscripción de las Armas Nucleares en La América Latina y el Caribe) was created in Latin America and the Caribbean. One of the reasons why the Opanal Secretariat is based in Mexico City is to recognize the Mexican Government leadership in the process leading to the establishment of such an international legal instrument.

¹ Adolfo López Mateos, Víctor Paz Estenssoro, João Goulart, Jorge Alessandri, Carlos Julio Arosemena – respectively.

14. It is essential to note the complexity of the Tlatelolco Treaty when it comes to giving effect to all prohibited acts by external actors. Two additional protocols are legally binding internationally. The Additional Protocol I was signed and ratified by the United States, France, The Netherlands, and the United Kingdom and refers to extra-continental or continental States that have any kind of responsibility for territories situated in the Zone of Application of the Treaty of Tlatelolco. The Additional Protocol II was signed and ratified by China, United States, France, United Kingdom, and Russia as the nuclear-weapon States needed to be bidden for actions in violation of Article 1 and respect the obligation not to use or threaten to use nuclear weapons against any of the parties to the Tlatelolco Treaty.

15. Besides the simultaneous existence of both NPT and the Tlatelolco Treaty, bilateral agreements fortify the obligations regarding the prohibition of nuclear weapons and the peaceful uses of atomic energy. Brazil and Argentina have a particular study case regarding the Brazilian–Argentine Agency for Accounting and Control of Nuclear Materials (ABACC, acronym in Portuguese and Spanish for Agência Brasileiro-Argentina de Contabilidade e Controle de Materiais Nucleares).

16. The bilateral agreement between Brazil and Argentina was signed and entered into force in 1991. Opponents on the soccer field, both States showed political will to ensure to each other and to the international community that all materials and nuclear facilities are used exclusively for peaceful purposes. This initiative does not compete with the IAEA mandate but complements its objectives.

17. Recently in 2017, it was adopted the Treaty on the Prohibition of Nuclear Weapons (TPNW). It entered into force in 2021. This treaty is part of the humanitarian disarmament architecture due to its characteristics of banning a weapon due to the humanitarian impact, the partnership among civil society, states and international organizations and negotiated in an innovative process that might happen outside the historical contexts². With many prohibitions along with other positive obligations, the TPNW is the path to achieving nuclear disarmament and is recognized as the step forward to comply with NPT Article VI, the pillar that remains not accomplished by its States Parties – especially for those that are considered nuclear-armed States or those that are dependent of others nuclear weapons.

18. TPNW negotiations and its implementation have a profound influence from Latin America and the Caribe. Even if Brazil was the first State to sign and Honduras was the State that enabled the entry into force after its ratification in October 2020, the fundamental role of Latin America and Caribe goes much beyond the process that resulted in the TPNW.

19. With Mexico and Brazil at the core group³ of the TPNW negotiations, Latin America was part of the Humanitarian Impact of Nuclear Weapons movement when Mexico hosted earlier 2014 at Nayarit the Second Conference on the Humanitarian Impact of Nuclear Weapons, following the first conference that happened in Oslo, Norway, in 2013. The conversations in those two conferences, plus the efforts to change the discourse regarding nuclear weapons⁴, led to the Humanitarian Pledge, adopted by the end of the third conference of its series: "2014 Vienna Conference on the Humanitarian Impact of Nuclear Weapons" in Vienna, Austria.

20. From a Latin American perspective, this region has lessons to share to achieve the same progress internationally regarding nuclear weapons elimination. Instead of pursuing

² See WILLIAMS, Jody; WAREHAM, Mary; GOOSE, Stephen. "Banning Landmines": disarmament, citizen diplomacy, and human security. Lanham: Rowman & Littlefield Publishers, 2008.

³ The core group includes Austria, Brazil, Ireland, Mexico, and South Africa. Few differences can be observed by ACHESON, Ray. "Impacts of the nuclear ban": how outlawing nuclear weapons is changing the world. *Global Change, Peace & Security*. 30:2, 2018, pp. 243-250.

⁴ See LORETZ, John; BIRCH, M.; VAN BERGEN, Leo (Ed.). "Preventing Nuclear War": the medical and humanitarian case for the Prohibition of Nuclear Weapons. Routledge, 2020. Also Borrie, John. "Humanitarian Reframing of Nuclear Weapons and the Logic of a Ban." *International Affairs (London)* 90.3 (2014): 625-646.

an ambitious, complex exclusive treaty and organism, Latin America and the Caribe dialed with their tensions creatively, both on legal instruments and/or organisms. The strength of the prohibition and the elimination of nuclear weapons in Latin America is due to the complexity of multi and complementary instruments and institutions.

III. Complementary instruments and the goal of eliminating nuclear weapons

21. International security will refer to each State and organization from different perspectives. Therefore, one legal instrument can't always fit everyone's needs, and flexibility will be desirable. Before misinterpretation, it doesn't mean those core obligations and prohibitions can be dismissible by a few to weaken the instrument itself. Flexibility must be used to strengthen the core obligations, not the opposite.

22. In a multicenter⁵ society, it is possible to observe the growth of the importance of different norms, organizations, and players in general. Due to this set of new actors increasing complexity, it is essential to consider further regulation perspectives and combine instruments that can work in the same direction. As an example, from Latin America, it is not the existence of the AEIA that will not permit the emergence of a bilateral agreement between Brazil and Argentina that allows minimizing tensions from a specific perspective and, at the same time, reinforces the control of fissile materials in the region.

23. This example can be replicated in other regions and within the TPNW's scope. Suppose the tensions between India and Pakistan need a unique collaboration to ensure compliance and provide specific assurances. In that case, the ABACC system remains an option that is fully compatible with both NPT and TPNW while remaining compatible with the core objectives of AEIA.

24. While the nuclear-armed States⁶ refuse to consider TPNW as a step forward and its complementarities within NPT objectives and obligations, they hide under arguments that continue to perpetuate nuclear weapons and the normalization of its possible use as if that could exist in good hands to wrong weapons. They argue that TPNW is not complimentary within the NPT without explaining how a more comprehensive obligation to disarm is not an advance if compared with the one that perpetuates, *de facto*, only the idea of non-proliferation⁷.

25. If the concern relates to an entire system of safeguards mechanisms, it is up to them – that have nuclear weapons – to propose them. None, even one instrument, is perfect, and not even the legal binding instruments mentioned in this paper. Taking NPT as an example, curiously that Brazil only acceded to the Treaty in the 1990-decade, the same period the several relevant instruments related to nuclear weapons and fissile materials entered into force: Treaty of Tlatelolco, ABACC.

26. This is a basic example that different States might require unique and complementary instruments to commit with others for the same purpose. Of course, this also confirms the hypothesis that no legal norm is perfect and demands flexibility for complementary actions.

⁵ TEUBNER, Gunther. *Constitutional fragments: societal constitutionalism and globalization*. Translated by Garteh Norbury. Oxford: Oxford University Press, 2012.

⁶ See Permanent Mission of France, “Adoption of a treaty banning nuclear weapons”. July 2017. Accessed in <<https://onu.delegfrance.org/Adoption-of-a-treaty-banning-nuclear-weapons>>, may 2022.

⁷ See KRASNO, Jean. “Banning the Bomb: the treaty on the prohibition of nuclear weapons. Boulder: Lynne Rienner Publishers, 2021.

III. Conclusions

27. Complementary legal instruments and organizations. They are the key to success after the political will of States and global leaders. Changes in the worldwide order, like the end of nuclear weapons, are about people, and there will be efforts and flexibility to make it happen where there is a will.

28. The consistent claim from the nuclear-armed States that TPNW is undermining NPT is not fair compared with the history of postponement of their legal obligation of nuclear disarmament. Banning nuclear weapons is the most effective measure compared with the growing proliferation of its existence.

29. The main issue that TPNW is undermining is the inertia of nuclear-armed States to comply with their obligation. The growth of stigmatization will make it harder for them to keep hiding the modernization and all investments in nuclear weapons, the opposite direction of their legal obligation. With the TPNW's new narrative on nuclear weapons, reframing it linking to the catastrophic consequences of a detonation, intentional or not, the elimination of such weapons is closer than ever.⁸

30. Humanitarian disarmament also confirms that innovative approaches and flexible legal framework can promote more effective arms control and end the suffering caused by weapons. In the end of 90's decade well determined people negotiated a treaty that banned landmines in an exotic way, including civil society in the room, while banned a conventional weapon, and today we celebrate several regions becoming free of landmines, the decreasing number of victims and the growing of hope for a better world. It is time to prevent more harm and backsliding.

31. People are forced to retire around 70-80 years in many national legal systems. Unfortunately, this year-limit doesn't cover nuclear weapons. It is up to humanity to stand up and act to the end of the existence of such weapons that cause catastrophic consequences and are not compatible with International Humanitarian Law.

⁸ See CASEY-MASLEN, Stuart. "The Treaty on the Prohibition of Nuclear Weapons": a commentary. Oxford: Oxford University Press, 2019.