

This article is part of the shadow report “I skuggan av makten” produced by Swedish Physicians Against Nuclear Weapons and WILPF Sweden.

TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS: THE ROLE OF MEETINGS OF STATES PARTIES AND REVIEW CONFERENCES

■ Peter Herby


- Head of Petersburg Partnerships
- Consultancy on arms control and disarmament issues.
- Head of the Arms Unit of the International Committee of the Red Cross (1994-2012)
- Led the disarmament program of the Quaker UN Office in Geneva (1983-1993)

The evolution of science means that treaty regimes also need to respond to new weapon technologies that may undermine their core norms. This collective monitoring and response is achieved *inter alia* through Meetings of States Parties and Review Conferences. The Treaty on the Prohibition of Nuclear Weapons contains core provisions that the majority of States have called for since the founding of the United Nations. But it also foresees its own further development including (1) the naming of an international authority to negotiate verification arrangements, (2) the establishment of deadlines for nuclear weapons removal and (3) “other measures”, including additional protocols, for the verified elimination of nuclear weapons. Only States Parties can participate in the adoption of these important measures.

Arms control and disarmament treaties are living organisms. While their fundamental norms remain constant over time they also reflect the context in

which they were negotiated, the limits of what could be achieved at a given historical moment, the priorities of negotiating States and current understanding of the types of weapons technology being covered. Their health and effectiveness require monitoring technological innovations and other treaty implementation challenges and, if needed, the development by State Parties of subsequent understandings, clarifications or additional protocols. For this reason most modern multilateral disarmament treaties provide for meetings of their State Parties as well as periodic review conferences to take stock of long-term trends and to adapt to new circumstances.

The 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) was a major step forward for the global disarmament regime governing weapons of mass destruction. By adding nuclear weapons to existing global bans on chemical and biological weapons the treaty establishes a global norm making clear that nuclear weapons are unacceptable, and now also illegal for States Parties, on humanitarian, moral and



legal grounds. It fills a “legal gap” in international law through a comprehensive prohibition on all core activities involving nuclear weapons: use, development, production, acquisition, transfer and stationing. It also prohibits assisting anyone to conduct such prohibited acts.

The TPNW establishes the normative foundations and legal-humanitarian rationale for nuclear disarmament. In doing so it provides the “goal post” against which all incremental steps towards a nuclear-free world can be measured. However, it intentionally leaves certain crucial elements open to elaboration through future meetings of States Parties. These elements include:

- (1) Designating a competent international authority (most likely the IAEA) to negotiate on behalf of States Parties a regime to verify “the irreversible elimination of nuclear-weapons programs, including the elimination or irreversible conversion of all nuclear-weapons-related facilities” (art. 4.6),
- (2) Establishing deadlines for the removal of any weapons stationed on the territory of a State Party and for the destruction of nuclear weapons by any State Party possessing them (articles 4.2 & 4.4), and,
- (3) Receiving and reviewing declarations concerning a State’s nuclear weapons status and of progress towards and completion of destruction of such weapons (articles 2.2 & 4.5).

Significantly, the Treaty also empowers meetings of its States Parties to agree upon and adopt further “(m) easures for the verified, time-bound and irreversible elimination of nuclear-weapon programmes, including additional protocols to this Treaty” (art. 8.1b).


The fact that the TPNW foresees the future development of provisions to ensure the verification of the elimination of nuclear weapons and their production programs should be considered a strength and not a weakness. Nuclear-armed States that have the

greatest technical capacity to elaborate detailed destruction provisions and verification mechanisms did not participate in the treaty’s negotiation and yet the treaty leaves the door open to their future adherence and to their active role in the negotiation of such provisions. It is also foreseeable that one or more would negotiate among themselves and bring the resulting agreement to the States Parties for their consideration. This was undoubtedly the best result achievable within the negotiating context.

Had States not possessing such weapons attempted to negotiate such provisions the result would almost certainly have been criticized as not being technically appropriate or well founded and thus could have constituted an obstacle to future adherence by States possessing nuclear weapons. Rather, the door was left open to them and an important role assigned to future meetings of States Parties. It is also important to note that the mandate of the negotiating conference, based on UN General Assembly resolution 71/258 of 23 December 2016 was “to negotiate a legally binding instrument to *prohibit* nuclear weapons, leading *towards* their total elimination” (emphasis added) and not to negotiate a nuclear disarmament destruction or verification regime.

Meetings of States Parties and Review Conferences have historically played a role in strengthening treaty regimes and advancing common understanding of core obligations. The most notable example is the Biological and Toxin Weapons Convention (BTWC). Like the TPNW, it did not contain provisions to verify the destruction of stockpiles of prohibited weapons. However, unlike the TPNW, it did not even require State Parties to have or to adopt agreements with an international authority (like the IAEA) to verify compliance with core provisions.

Successive meetings of States Parties and Review Conferences of the BTWC over several decades have attempted to strengthen the convention regime through a variety of measures. These initiatives have included successes, failures and attempts to over-



come the failures. They include (1) agreements on politically binding confidence-building measures through which States demonstrate compliance with the BTWC through declarations, scientific contacts and information exchange, (2) unsuccessful efforts from 1992 to 2001 to negotiate a legally binding verification protocol, and (3) 15 years of generally productive intergovernmental work since 2003 focused on practical measures to prevent hostile uses of biology, strengthen national implementation and control measures, respond to suspicious outbreaks of disease and promote codes of conduct for those working in the life sciences. The work since 2003 reflects the capacity of States Parties to adapt creatively to the failure of protocol negotiations, rapid developments in the life sciences and the post Cold War security environment. Another significant contribution was the clarification by the 1996 Review Conference that “although “use” is not explicitly prohibited under Article I of the BTWC¹, it is still considered to be a violation of the convention”.

Internationally negotiated treaties, particularly on weapons, are never perfect. They reflect a complex blend of moral, legal and political imperatives, technical and security interests and an understanding of the technology (whether weapons or verification related) of the time. Meetings of States Parties and Review Conferences provide States Parties with the opportunity and responsibility to strengthen and to adapt the treaty regime to new circumstances while preserving its core objectives. The TPNW specifically foresees actions by States Parties to facilitate the adherence of nuclear weapon States.

Decisions on adherence to the TPNW or other treaties should be based on agreement with their core provisions and the core legal and moral norms they contain and not on demands for perfection. And on a commitment to strengthening these norms through their universalization and by shaping additional provisions - steps that can only be done by States Parties.

FOOTNOTES:

1. When the BWC was negotiated in 1971 it was considered that the use prohibition contained in the 1925 Geneva Protocol was adequate. However, given different legal views on the Protocol’s prohibitions and different sets of States Parties further clarity was considered important.