

Treaty on the prohibition of nuclear weapons – The 'Ban Treaty'

SUMMARY

On 22 January 2021, the Treaty on the Prohibition of Nuclear Weapons (the TPNW) enters into force. On that day, nuclear weapons development, testing, production, possession, stockpiling, use and threat of use, as well as the stationing or deployment of another country's nuclear weapons on a state party's national territory will become prohibited under international law. The TPNW has been hailed as historic by supporters of an initiative, which has gained ground in recent years, to rid the world of the most destructive weapon known to humankind. The International Campaign to Abolish Nuclear Weapons (ICAN), which spearheaded these efforts, was awarded the 2017 Nobel Peace Prize. Supporters hope that the TPNW will strengthen the international legal framework and gradually advance the political norm against nuclear weapons possession and use. Opponents of the Treaty argue that the conditions for disarmament do not currently exist and that promoters of the TPNW fail to recognise this. They also point to the danger of undermining the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), recognised as the cornerstone of the global non-proliferation and disarmament regime, including by proponents of the TPNW. The nine states known to have military nuclear programmes have not signed the TPMW. Nor have Member States of the North Atlantic Treaty Organization (NATO), which in 2016 re-confirmed its commitment to nuclear deterrence. This raises doubts about the impact of this new instrument and its ability to create normative values. Most EU Member States, 21 of which are members of NATO, oppose the TPNW, and only three have ratified it. The European Parliament has noted that the TPNW provided evidence of the desire to achieve the objective of a nuclear weapons-free world.

This is an updated version of an earlier briefing, from January 2018.



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The UN's goal of global nuclear disarmament

Global nuclear disarmament – in other words, a world free of nuclear weapons – is one of the [United Nations'](#) most long-standing objectives. The first ever [resolution](#) adopted by the United Nations General Assembly (UNGA) in January 1946 called for 'control of atomic energy to the extent necessary to ensure its use only for peaceful purposes' and for 'the elimination from national armaments of atomic weapons'.

The 1970 [Treaty on the Non-Proliferation of Nuclear Weapons](#) (Non-Proliferation Treaty, NPT) is at the cornerstone of the [global non-proliferation and disarmament regime](#). It grants the five nuclear-weapon states (NWS) recognised by the NPT – China, France, Russia, the United Kingdom (UK), and the United States of America (USA) – exclusive rights to possess nuclear arsenals, but also obliges them 'to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race ... and to nuclear disarmament' (NPT Article VI). However, non-NWS have [expressed dissatisfaction](#) at the pace of nuclear disarmament, and accused the NWS of failing to specify how they would design a [verifiable, enforceable nuclear disarmament regime'](#) under the NPT. The NPT is reviewed every five years. Failure to [implement](#) the results of the review conferences in 2000 and 2010 has been heavily criticised, as has the failure of the 2005 and 2015 conferences to produce final documents.

Nuclear powers

Nine states are known to have military nuclear programmes: China, France, Russia, the UK and the USA are recognised as nuclear-weapon states (NWS) under the NPT; India, Pakistan and Israel have never signed the NPT; North Korea meanwhile left the Treaty in 2003 to develop its nuclear weapons programme.

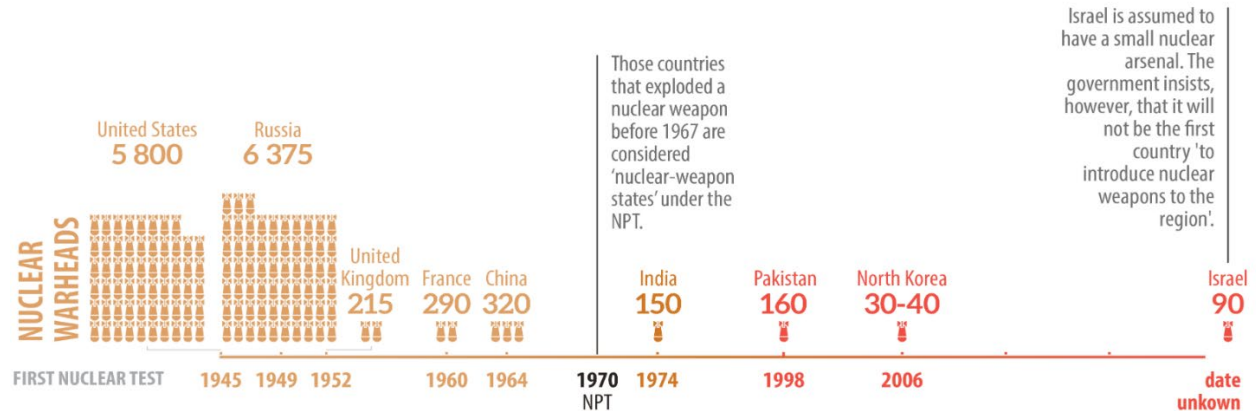
The Iranian nuclear programme

In 1954, the United States established the '[Atoms for Peace](#)' programme, with the aim of sharing nuclear materials and technology for peaceful purposes with other countries. Iran benefited from this programme until the 1979 Iranian Revolution. However, Iran continued to invest in nuclear technology and developed an extensive nuclear fuel cycle, including sophisticated enrichment capabilities. Starting in 2002, concerns grew about the peaceful nature of Iran's nuclear programme, and in 2006, the International Atomic Energy Agency finally referred the issue of Iran's nuclear programme to the UN Security Council (UNSC). The same year, the UN began to impose restrictive measures on Iran, imposing an embargo on states exporting materials that could be used for Iran's nuclear programme, and placing financial and travel restrictions on individuals connected to its nuclear programme. Negotiations between the E3/EU+3 (France, Germany, the United Kingdom, the EU High Representative, China, Russia, and the United States) and Iran yielded the [Joint Comprehensive Plan of Action](#) (JCPOA) in July 2015, a comprehensive 25-year nuclear agreement limiting Iran's nuclear capacity in exchange for sanctions relief. On 16 January 2016, all nuclear-related sanctions on Iran were lifted in response to its progress in meeting key metrics of the deal. However, following the [US withdrawal from the JCPOA in 2018](#) and the (re)-imposition of very extensive US sanctions, Iran has since rolled back its compliance with the agreement's limits on Iran's nuclear programme. The IAEA, which continues to [verify and monitor Iran's nuclear programme](#), has [reported](#) that Iran is now in [breach](#) of all restrictions imposed under the JCPOA. Joe Biden's election as US President is seen as a [last opportunity](#) to prevent the collapse of the JCPOA, which is still considered to be the best 'vehicle' to prevent Iran from developing nuclear weapons.

The UN's global nuclear disarmament objective, first declared in 1946, has patently not been achieved. Global stocks of nuclear weapons are at their lowest in over 50 years, but there are still an estimated [13 400](#) nuclear weapons worldwide, many on high-alert status. The overall number of nuclear weapons worldwide has fallen – from a peak of 70 000 in the mid-1980s; however, all states with nuclear weapons are currently investing vast sums in [modernising](#) their nuclear arsenals and

delivery systems, raising fears of a new arms race. Overall, the security environment has [deteriorated significantly](#). [Rivalries](#) between nuclear-armed states, including those not recognised under the NPT, at both global and regional level, have increased the possibility of nuclear weapons being used in an armed conflict. Moreover, the [United States](#) and Russia have been working on introducing 'low yield nuclear weapons' with a lower threshold for use – a policy that might change under the [Biden Presidency](#). The number of states seeking to acquire nuclear weapons is likely to grow over the coming years.

Figure 1 – Nuclear weapons worldwide (2019 figures)



Data source: [SIPRI Yearbook 2020](#). All figures are estimates.

Several UNGA resolutions from 2012 to 2015 created new momentum for nuclear disarmament efforts. In December 2012, an [open-ended working group](#) (OEWG) was set up to work on proposals to take multilateral nuclear-disarmament talks forward. The OEWG adopted a [report](#) in August 2016 recommending that a conference be held to negotiate a treaty prohibiting nuclear weapons. On [27 October 2016](#), the First Committee on Disarmament and International Security of the UN General Assembly adopted [Resolution L.41](#) to convene a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, with a view to their elimination. The conference took place from 27 to 31 March and 15 June to 7 July 2017.

The [Treaty on the Prohibition of Nuclear Weapons](#) (TPNW) was adopted on 7 July 2017, on the last day of the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination. The treaty includes a [comprehensive](#) set of prohibitions on participating in any nuclear weapons activities. These include undertakings not to develop, test, produce, acquire, possess, stockpile, use or threaten to use nuclear weapons. Furthermore, the treaty also prohibits the deployment of nuclear weapons on national territory and the provision of assistance to any state in the conduct of prohibited activities. The treaty also obliges states parties to offer adequate assistance to individuals 'affected by the use or testing of nuclear weapons' as well as to take 'necessary and appropriate measures of environmental remediation' in areas under their jurisdiction or control 'contaminated as a result of activities related to the testing or use of nuclear weapons'.

122 UN Member States [voted](#) in favour of the adoption of the TPNW, one voted against (the Netherlands) and one abstained (Singapore). The nine states known to have military nuclear programmes did not attend the conference, hence they did not vote, as was the case for most NATO Member States. The treaty was opened for [signature](#) on 20 September 2017 and has since been signed by 86 UN Member States; 51 states have ratified it so far, allowing it to enter into force. None of the states known to have military nuclear programmes has signed the TPNW, nor have NATO Member States.

The Humanitarian Initiative

The nuclear disarmament debate has been strongly influenced in recent years by the [Humanitarian Initiative](#), which brings together states and civil society representatives dissatisfied with the lack of progress in nuclear disarmament in the context of the NPT. Noting that nuclear weapons are the only weapons of mass destruction not to have been explicitly prohibited under international law, supporters of the initiative [pledged](#) to fill the 'legal gap', by calling for effective measures (a legally binding instrument) to prohibit nuclear weapons, based on international humanitarian law. On 7 December 2015, the UN General Assembly adopted [Resolution 70/48](#) on a humanitarian pledge to eliminate nuclear weapons. Advocates of the total elimination of nuclear arms believe a comprehensive ban is the only way to avoid the potentially catastrophic [humanitarian consequences](#) of a nuclear weapon explosion, which 'would not be constrained by national borders but have regional or even global effects, potentially threatening the survival of humanity'. By stigmatising nuclear weapons, supporters of the TPNW hope that it will create a new norm and thereby put NWS under [pressure](#) to show progress on disarmament.

The Ban Treaty and the global non-proliferation and disarmament regime

[Supporters](#) of the Ban Treaty [argue](#) that it reinforces and complements the existing non-proliferation and disarmament regime. All states parties to the NPT are – already – obliged, pursuant to [Article VI](#), 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'. Experts argue that the TPNW also strengthens the non-proliferation norm laid down in the NPT by legally obliging states parties to sign or keep in place safeguards agreements with the International Atomic Energy Agency (IAEA), to ensure that peaceful nuclear material is not diverted for weapons development. The TPNW also prohibits nuclear testing, which the international community has sought to outlaw through the [Comprehensive Test Ban Treaty](#) (CTBT). Even though 184 countries have signed and 168 states have [ratified the CTBT](#), the treaty has not yet [come into force](#).

Moreover, supporters of the TPNW hope that, in the long run, the treaty will discourage investment in the production of – technology related to – nuclear weapons, even in states not party to the treaty. The treaty 'strengthens [international legal structure and norms](#) against nuclear weapons possession and use, and further delegitimises nuclear weapons'. Experience with the 1999 [Mine Ban Treaty](#) and the 2010 [Convention on Cluster Munitions](#) has shown that de-legitimising weapons can [discourage investment](#), since many financial institutions have policies that [deny financial services](#) to companies producing weapons that are prohibited by international law. Consequently, supporters hope that it will make it harder to produce nuclear weapons, creating an incentive to disarm. Moreover, the prohibition of other weapons of mass destruction – such as chemical or biological weapons – has successfully curbed proliferation and advanced norms against such weapons.

Opposition to a ban on nuclear weapons

[Opponents](#) of a ban on nuclear weapons consider nuclear weapons to be an essential element of deterrence and, as such, a means to prevent conflict and war. Deterrence is a military doctrine according to which the [risk](#) that a country will retaliate with the nuclear weapons it possesses deters an enemy from attacking. [Nuclear deterrence](#) continues to be an important aspect of the security policies of all NWS and their allies. Members of NATO, a military alliance that includes three NWS – France, the UK and the USA – [confirmed](#) in July 2016 that they consider credible deterrence and defence to be essential, and that nuclear defence capabilities will remain a core element of NATO's overall strategy. In September 2017, [NATO](#) confirmed this position, expressed the alliance's

[disapproval](#) of the Ban Treaty and signalled that there would be 'no change in the legal obligations on [NATO] countries with respect to nuclear weapons'.

EU and NATO membership

EU Member State	NATO member
Belgium	Y
Bulgaria	Y
Czechia	Y
Denmark	Y
Germany	Y
Estonia	Y
Ireland	
Greece	Y
Spain	Y
France	Y
Croatia	Y
Italy	Y
Cyprus	
Latvia	Y
Lithuania	Y
Luxembourg	Y
Hungary	Y
Malta	
Netherlands	Y
Austria	
Poland	Y
Portugal	Y
Romania	Y
Slovenia	Y
Slovakia	Y
Finland	
Sweden	

Ratification of the TPNW:

Yes –No

Criticism of the TPNW

One of the TPNW's greatest weaknesses is the fact that the [nuclear-armed states](#) and their allies were not involved in its drafting, and maintain that they have no intention to sign it. Moreover, strong disagreements between supporters and opponents of the treaty are likely to affect future negotiations under the NPT and may derail the next NPT review conference, currently scheduled to take place in 2021, potentially further weakening the existing non-proliferation and disarmament regime. The [TPNW](#) has also been criticised as having been hastily drafted, and as lacking rigorous [verification](#) and enforcement provisions.

Potential weakening of NATO's nuclear deterrent

The TPNW explicitly prohibits the 'stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in [the territory of a State party], or at any place under its jurisdiction or control'. [Five NATO states](#) – Belgium, Germany, Italy, the Netherlands and Turkey – host US nuclear weapons on their territory as part of the alliance's collective security strategy. If any one of these states were to sign the TPNW, the stationing of nuclear weapons on their territory would become illegal, thus weakening the [Alliance's nuclear deterrent](#). There are concerns that public support for the TPNW may oblige European governments to stop hosting US nuclear weapons. According to a [survey](#) conducted in 2019, public opinion in Belgium, Germany, Italy and the Netherlands was strongly in favour of the removal of US nuclear weapons from their countries. Citizens in all four countries were also overwhelmingly in favour of signing the TPNW. In 2017, NATO [dismissed the TPNW](#) as not effective, since it will not engage any state actually possessing nuclear weapons, and as disregarding the realities of the increasingly challenging international security environment.

EU Member States' views on the TPNW

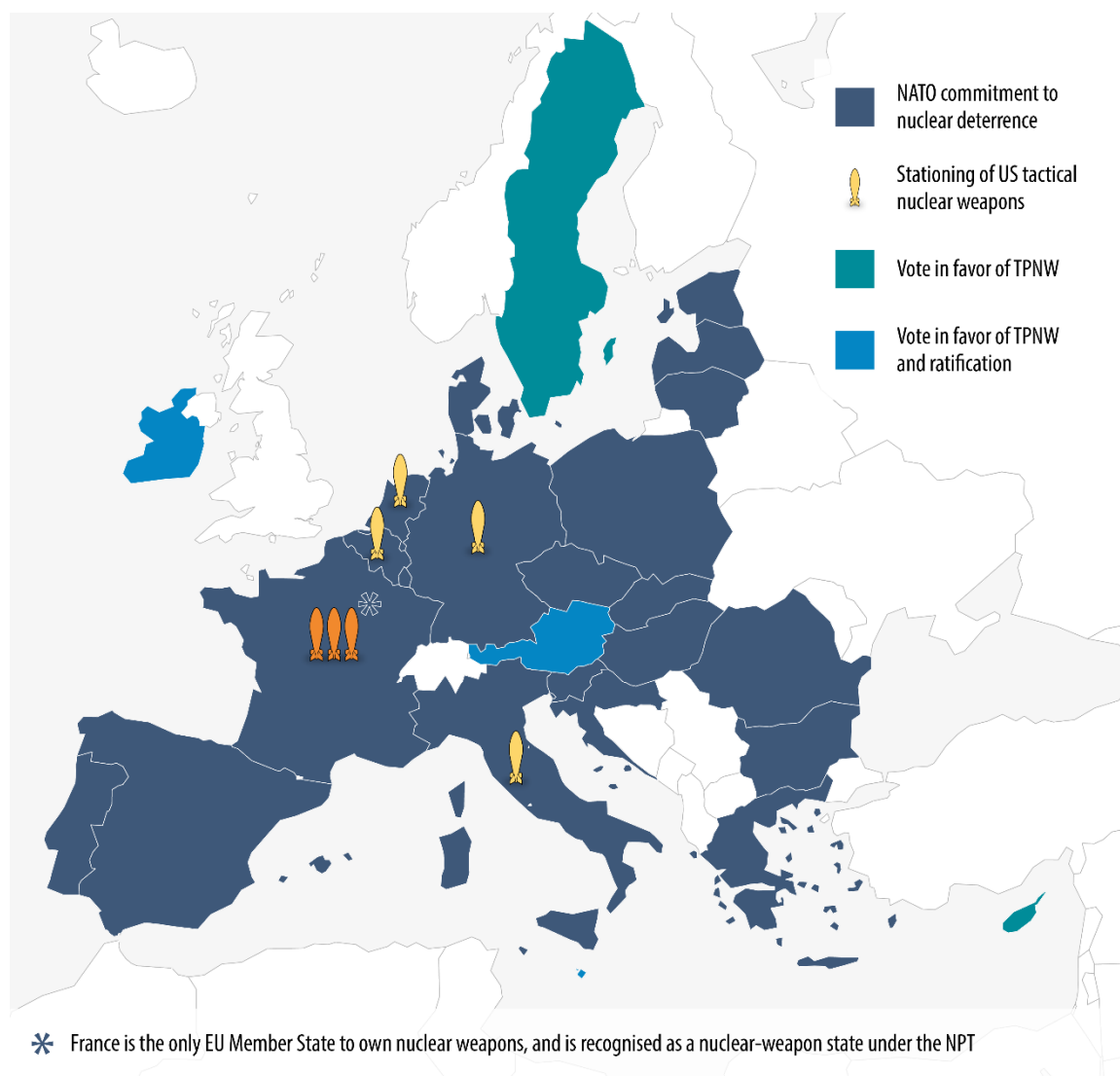
EU Member States' views on the TPNW are divergent. [France](#) is fully committed to step-by-step nuclear disarmament, but considers [nuclear weapons](#) to be an essential part of the country's [security strategy](#) for now. A further 20 EU Member States are NATO members and have signed up to NATO's commitment to nuclear deterrence. These include four which host US tactical nuclear weapons (Belgium, Germany, Italy and the Netherlands) and 16 that are covered by NATO's ['extended nuclear deterrence pledges'](#), including all the central and eastern European Member States. By contrast, Austria, which is not a NATO member, was one of the key drivers behind the Humanitarian Initiative. Only Austria, Cyprus, Ireland, Malta and Sweden voted in favour of the TPNW, and only Austria, Ireland and Malta have ratified it. There is no agreed EU position on the TPNW, reflecting long-standing divisions on nuclear disarmament. All Member States are party to the NPT, and as such committed to pursuing policies designed to achieve a world without nuclear weapons. The [EU](#) and its Member States

are committed to ensuring the [success](#) of the next NPT Review Conference, and more generally, to step up public diplomacy to [promote multilateralism](#).

The European Parliament

On 27 October 2016, Parliament adopted a [resolution](#) welcoming the convening of a conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination. The resolution invited Member States to lend support and play an active part in the conference, which took place in [March, June and July 2017](#). In a [recommendation](#) adopted on 21 October 2020, Parliament noted that the TPNW provided 'evidence of the desire to achieve the objective of a nuclear weapons-free world'. Parliament highlighted that nuclear disarmament had to be part of a gradual process guaranteeing the undiminished security of all, while preventing a new arms race. Parliament also recalled that, as a means of preventing the development of nuclear weapons arsenals, the Fissile Material Cut-off Treaty was a vital and irreplaceable step towards a world free of nuclear weapons. The [Fissile Material Cut-off Treaty](#) is a proposed international agreement that would prohibit the production of the two main components of nuclear weapons: highly enriched uranium (HEU) and plutonium. In the same [recommendation](#), Parliament reaffirmed its full support for the NPT and its three mutually reinforcing pillars of non-proliferation, disarmament and peaceful use of nuclear energy.

Figure 2 – EU Member States' views on the TPNW



Source: EPRS.

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