

# 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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## Complementarity between the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty on the Prohibition of Nuclear Weapons

### Working paper submitted by Cuba

1. With the entry into force of the Treaty on the Prohibition of Nuclear Weapons on 22 January 2021, the international community clearly established that nuclear weapons are not only inhumane, immoral and ethically indefensible, but also illegal.
2. The Treaty makes an effective contribution to general and complete disarmament and international peace and security by establishing a new norm of international law that categorically prohibits nuclear weapons in all circumstances. This is a vital step towards the total and irreversible elimination of nuclear weapons, which is the ultimate goal of the Treaty on the Non-Proliferation of Nuclear Weapons. The Treaty on the Prohibition of Nuclear Weapons has “filled the legal vacuum” in the absence of a prohibition comparable to those contained in the 1993 Chemical Weapons Convention and the 1972 Biological and Toxin Weapons Convention.
3. Nuclear weapon-States are required, pursuant to article VI of the Non-Proliferation Treaty and together with the other States parties, to pursue and conclude negotiations relating to nuclear disarmament. Prolonged non-compliance with article VI was the main reason why the majority of States parties to the Non-Proliferation Treaty negotiated the Treaty on the Prohibition of Nuclear Weapons in the General Assembly in 2017. The participation of more than 120 countries in those negotiations, seeking an explicit prohibition of nuclear weapons, demonstrates the shift in the nuclear disarmament debate and the imperative need for this pillar to be given the same attention as the others.
4. The Treaty on the Prohibition of Nuclear Weapons does not undermine the integrity of the Non-Proliferation Treaty in any way.
  - Its recent entry into force will help to achieve the goals of the Non-Proliferation Treaty through efforts that are complementary and compatible with article VI: “each of the Parties to the Treaty undertakes 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.” Article 4 of the Treaty on the Prohibition of Nuclear Weapons, “Towards the total elimination



of nuclear weapons”, serves as a road map for achieving the goal of a nuclear-weapon-free world.

- It is based on the shared desire expressed in the preambular part of the Non-Proliferation Treaty to “further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control.”
- It is explicitly recognized in the preamble that the full and effective implementation of the Non-Proliferation Treaty has a vital role to play in promoting international peace and security.
- By prohibiting States parties from producing, possessing, testing, deploying, stationing and using nuclear weapons and from assisting, encouraging or inducing anyone to engage in any prohibited activity, the Treaty on the Prohibition of Nuclear Weapons supports the Non-Proliferation Treaty in its non-proliferation efforts. It does not establish obligations that are contrary to those set out in the Non-Proliferation Treaty in the area of safeguards. On the contrary, in article 3, it strengthens compliance with the existing safeguards system by obliging States parties to, at a minimum, maintain in force any safeguards obligations that they had agreed to with the International Atomic Energy Agency (IAEA) at the time of entry into force of the Treaty. It is understood that, under the Treaty on the Prohibition of Nuclear Weapons, States parties that have concluded an additional protocol are legally required to uphold it and have lost the right to withdraw from it. In article 3, paragraph 2, there is also provision for the entry into force of a comprehensive safeguards agreement (INFCIRC/153 (Corrected)) with IAEA for those parties that do not have one, thereby preserving the voluntary nature of the additional protocol, but ultimately strengthening the safeguards regime set out in the Non-Proliferation Treaty, which has a lower standard.
- It uses the terminology of the Non-Proliferation Treaty and other treaties on weapons of mass destruction. This is quite evident in its article 1 on prohibitions, which is consistent with the provisions of nuclear-weapon-free zone treaties.
- This instrument, like the Non-Proliferation Treaty, does not contain a definition of “nuclear weapons”, which allows for consistency between the legal object and purpose of the two treaties.
- Its article 18, by providing that “the implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the Treaty”, highlights the desire of the negotiators and the States parties adopting the instrument to integrate it into the existing regime. The Treaty on the Prohibition of Nuclear Weapons does not exclude the legal effects of obligations undertaken under the Non-Proliferation Treaty.
- Both instruments protect the inalienable right of States to develop research, production and use of nuclear energy for peaceful purposes without discrimination.
- The Treaty on the Prohibition of Nuclear Weapons, with its positive obligations regarding victim assistance and environmental remediation, makes a significant contribution to the discussions that the States parties to the Treaty on the Non-Proliferation of Nuclear Weapons have held since the Eighth Review

Conference in 2010. In the Final Document, in paragraph 77, the Conference recognized “the importance of having in place effective and coherent nuclear liability mechanisms at the national and global levels to provide compensation, if necessary, for damage inter alia to people, property and the environment due to a nuclear accident or incident”. Moreover, in paragraphs 70 and 71, the Conference welcomed “the attention to problems of safety and contamination related to the discontinuation of nuclear operations formerly associated with nuclear-weapons programmes, including, where appropriate, safe resettlement of any displaced human populations and the restoration of economic productivity to affected areas”; and encouraged “Governments and international organizations that have expertise in the field of clean-up and disposal of radioactive contaminants to consider giving appropriate assistance”.

5. The Treaty on the Prohibition of Nuclear Weapons is a necessary step towards the implementation of article VI of the Non-Proliferation Treaty because, despite the obligation contained therein, no significant progress has been made since the adoption of that Treaty towards achieving the common goal of “a nuclear-weapon-free world”.

6. The Treaty on the Prohibition of Nuclear Weapons does not undermine the architecture of international security, disarmament and non-proliferation; rather it reflects the aspiration of the majority of the international community by making an effective contribution to the maintenance of international peace and security with its prohibition of a weapon of mass destruction that has indiscriminate and persistent effects on life and the environment.

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