

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

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## Nuclear disarmament as a humanitarian and legal imperative

### Working paper submitted by the International Committee of the Red Cross

1. The continued existence of nuclear weapons is one of the biggest threats to humanity. Their use would have catastrophic humanitarian consequences, capable of destroying all life on earth. The risks of such use are growing, in terms of both probability and magnitude of effects. Against this backdrop, nuclear disarmament is an urgent humanitarian imperative.

2. The International Committee of the Red Cross (ICRC) first called for the abolition of nuclear weapons in September 1945, shortly after its delegates witnessed the catastrophic effects of the atomic bombing of Hiroshima, working alongside the Japanese Red Cross to assist tens of thousands of dying and wounded civilians. The horrific devastation and suffering that it caused left a lasting mark on the International Red Cross and Red Crescent Movement and have driven it to advocate strongly for nuclear weapons to be prohibited and eliminated for the past 77 years.<sup>1</sup>

3. In 1968 the Treaty on the Non-Proliferation of Nuclear Weapons had already established an obligation to pursue multilateral negotiations on effective measures leading to nuclear disarmament.<sup>2</sup> According to the International Court of Justice, this includes an obligation to bring such negotiations to a conclusion and to agree on nuclear disarmament measures.<sup>3</sup> The Treaty on the Prohibition of Nuclear Weapons constitutes an effective measure in the implementation of article VI of the Non-Proliferation Treaty. The Treaty on the Prohibition of Nuclear Weapons comprehensively prohibits nuclear weapons as a necessary first step towards their elimination. In parallel, it provides pathways for future measures to achieve nuclear disarmament and its verification.

<sup>1</sup> L. Schroeder, “The ICRC and the Red Cross and Red Crescent Movement: Working Towards a Nuclear-Free World since 1945”, *Journal for Peace and Nuclear Disarmament*, Vol. 1, Issue 1, 2018; J. Kellenberger, “Bringing the era of nuclear weapons to an end”, statement by the president of the International Committee of the Red Cross to the Geneva Diplomatic Corps, Geneva, 20 April 2010.

<sup>2</sup> United Nations, Treaty on the Non-Proliferation of Nuclear Weapons, article VI; International Court of Justice, Advisory Opinion, “Legality of the Threat or Use of Nuclear Weapons”, 8 July 1996, paras. 99–101.

<sup>3</sup> Ibid., para. 105(2)(F).



4. Since the adoption in 2011 of the Council of Delegates resolution entitled “Working towards the elimination of nuclear weapons”, the International Red Cross and Red Crescent Movement has intensified its efforts to place the humanitarian consequences of nuclear weapons, the rules and principles of international humanitarian law and the interests of humanity at the centre of the nuclear weapons debate. The Movement has, through a wide range of outreach activities, repeatedly called on all States to promptly sign, ratify or accede to and faithfully implement the Prohibition Treaty, the Non-Proliferation Treaty, the Comprehensive Nuclear-Test-Ban Treaty and regional treaties establishing nuclear-weapon-free zones.<sup>4</sup>

5. The first Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons is an important milestone for the success of the Treaty. It will establish a framework for the effective implementation and progressive universalization of the Treaty and underscore its significant added value within the broader nuclear disarmament and non-proliferation architecture.

### **Catastrophic humanitarian consequences of nuclear weapons**

6. Evidence of the immediate and long-term impacts resulting from the use and testing of nuclear weapons since 1945 demonstrates that the humanitarian consequences of any nuclear weapons use would be catastrophic.<sup>5</sup> A nuclear detonation releases a combination of powerful blast waves, intense heat in the form of thermal radiation and high amounts of ionized radiation, which is typically dispersed over very wide areas. The heat generated would probably trigger intense fires and firestorms, the effects of which would be uncontrollable. Similarly, the effects of the residual radioactive particles or nuclear fallout created by the nuclear blast cannot be contained in space or time and would probably spread far beyond the target area, carried by wind and other weather conditions, potentially over great distances and across borders.

7. A nuclear weapon detonation in or near a populated area would result in massive loss of life and widespread destruction. It would trigger large-scale displacements and cause long-term harm to human health and well-being, as well as long-term damage to the environment, infrastructure, socioeconomic development and social order. No State or international body would be able to appropriately address the immediate humanitarian emergency nor the long-term consequences of a nuclear weapon detonation in a populated area, nor provide appropriate assistance to those affected.

8. Owing to the long-lasting effects of exposure to ionizing radiation, the use or testing of nuclear weapons has, in several parts of the world, left a legacy of serious health and environmental consequences. Those consequences continue to be the subject of scientific scrutiny, with analysis and emerging evidence of the sex- and age-differentiated impacts of ionizing radiation on human health, including on mortality and infant mortality rates, of the long-term impacts of nuclear weapons testing on the environment and of the consequences of a nuclear war on the global climate, food security and ocean acidification, as well as analysis and evidence of regional preparedness and response measures to nuclear testing.

9. There is a need for continued and scaled-up efforts to research and understand the humanitarian and environmental consequences of nuclear weapons testing. Communities living in or near former nuclear testing areas continue to be affected today

<sup>4</sup> See Council of Delegates of the Red Cross and Red Crescent, resolution 4 entitled “Working towards the elimination of nuclear weapons”, 2017.

<sup>5</sup> This section is based on the findings of the 2020 expert meeting on the humanitarian impacts and risks of the use nuclear weapons, organized by ICRC and the International Federation of Red Cross and Red Crescent Societies, the full report of the meeting is available at: <https://www.icrc.org/en/document/humanitarian-impacts-and-risks-use-nuclear-weapons>.

by the impacts of ionizing radiation released from nuclear tests that occurred decades ago. Many communities report that they do not have sufficient information about their own history of exposure, the current risks of living in a radioactively contaminated area and the intergenerational risks associated with radiation exposure. A lack of transparency and a failure to take the perspectives, lifestyles and needs of communities into account are barriers that need to be overcome in future research efforts.

10. While it has been established that women and children are disproportionately affected by ionizing radiation, little is known about its effects on reproductive health. The role of biological sex as a factor in radiation harm among adults and children is an area for further research.

11. Research into the immediate and long-term impacts of nuclear weapons use and testing informs us of the unique characteristics of these weapons, it provides a crucial basis for humanitarian preparedness and response and for upholding the rights of the individuals and communities affected, and is essential to assess the legality of the use of nuclear weapons under international humanitarian law.

### **Contribution of the Treaty on the Prohibition of Nuclear Weapons to reducing the growing risk of use of nuclear weapons**

12. The risk of use of nuclear weapons – whether by intent, miscalculation or accident – has increased in recent years to levels not seen since the cold war, as a result of a number of factors: growing tensions between nuclear-armed States and their allies, the development of new types of nuclear weapons that are more powerful or more usable, the new or expanded role of nuclear weapons in military plans and doctrine and the vulnerability of nuclear command and control systems to cyberattacks.

13. Preventing the use of nuclear weapons is of the utmost urgency. At the same time, nuclear risk reduction cannot become a substitute for the implementation of States' legally binding obligations to achieve nuclear disarmament under the Non-Proliferation Treaty. The only way to guarantee that nuclear weapons are never used again is by prohibiting and eliminating them.

14. The Prohibition Treaty stipulates a set of comprehensive prohibitions of activities related to nuclear weapons, including their development, possession, testing, use, threat to use, transfer and hosting, and seeking or receiving assistance for any of the prohibited activities. Under article 5, States parties must take all appropriate legal, administrative and other measures to prevent and suppress any activity prohibited by the Treaty, as well as all other measures necessary for the implementation of the treaty. It will be important that States parties report to the first Meeting of States Parties on such implementation measures and share domestic legislation to contribute to capacity-building among other States parties, as well as signatory States. ICRC has published a model law on the implementation of the Treaty,<sup>6</sup> as well as guidance on the interpretation of the prohibition of assistance.<sup>7</sup>

15. The Prohibition Treaty mandates a comprehensive set of safeguards for States that do not possess nuclear weapons after 7 July 2017 and for those that did or do possess them at the time of joining the Treaty. This is to ensure that States are using nuclear material and technology solely for peaceful purposes and to confirm that these are not being misused or diverted for nuclear weapons activities. In this respect, the Prohibition Treaty goes beyond the Non-Proliferation Treaty by obligating States parties to maintain any safeguards in place at the time the Treaty enters into force. It also imposes on States parties that possess nuclear weapons at the time of joining the Treaty or possessed them after 7 July 2017 and until they joined the Treaty, the obligation to

<sup>6</sup> See [www.icrc.org/en/document/model-law-treaty-prohibition-nuclear-weapons-0](http://www.icrc.org/en/document/model-law-treaty-prohibition-nuclear-weapons-0).

<sup>7</sup> See [www.icrc.org/en/document/view-icrc-interpretation-treaty-prohibition-nuclear-weapons](http://www.icrc.org/en/document/view-icrc-interpretation-treaty-prohibition-nuclear-weapons).

negotiate, conclude and maintain an adequate safeguards agreement. ICRC has published guidance on the interpretation of the safeguards provisions of the Treaty.<sup>8</sup>

16. ICRC is working actively with the International Red Cross and Red Crescent Movement, States and the International Campaign to Abolish Nuclear Weapons to promote article 12 of the Prohibition Treaty. Continued determination is required to work towards the universalization of this crucial international humanitarian law instrument and to promote the total elimination of nuclear weapons because of their inherent risks and catastrophic humanitarian consequences. This work would benefit from a structured framework established for this purpose by the first Meeting of the States Parties.

### **Framework of positive obligations to assist victims and remediate the natural environment**

17. The Prohibition Treaty establishes a framework of shared responsibility among States parties for the effective implementation of its provisions, including the positive obligations. Positive obligations are a set of remedial measures mandated under articles 6 and 7 that require States parties to take positive action in order to assist victims and remediate the natural environment affected by the use or testing of nuclear weapons. Those articles are key to achieving the Treaty's humanitarian objectives and should be interpreted in the light of other humanitarian disarmament treaties and international humanitarian law, notably the principles of non-discrimination, inclusivity, accessibility and transparency.

18. States parties should identify and share the concrete actions and measures necessary to redress, to the maximum extent possible, the harm caused by the use and testing of nuclear weapons. In doing so, they should make use of the full protective scope of the treaty, with a view to implementing its positive obligations in a broad and holistic manner, taking into account both practices and lessons learned from the implementation of other humanitarian disarmament treaties, as well as the specificity of nuclear weapons and the harm they cause, which will dictate a differentiated approach in some cases.

19. While the primary obligation for victim assistance and environmental remediation lies with affected States, the Prohibition Treaty stipulates obligations of international cooperation and assistance among States parties, which aim to spread the responsibility and ensure that the needs of victims are effectively met. In addition, the Treaty recognizes that States parties that have used or tested nuclear weapons in the past have a heightened responsibility to help affected States parties in meeting their obligations to assist victims and remediate the natural environment.

20. Cooperation and assistance relationships with States outside the Prohibition Treaty can also contribute significantly to the effective implementation of positive obligations. It is therefore important that the States parties to the Prohibition Treaty and other States develop synergies, including in the context of the Non-Proliferation Treaty, and explore the complementarity of the two instruments in terms of providing assistance to victims and the remediation of the natural environment impacted by the use or testing of nuclear weapons ([NPT/CONF.2020/WP.52](#), para. 19 (e)).

### **Nuclear weapons and international humanitarian law**

21. In the light of their catastrophic humanitarian consequences, it is extremely doubtful that nuclear weapons could ever be used in an armed conflict in accordance with the principles and rules of international humanitarian law. ICRC welcomes the clear stance taken in the preamble to the Prohibition Treaty in this regard.

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<sup>8</sup> Ibid.

22. Directing nuclear weapons against civilian populations or civilian objects, such as entire cities or other concentrations of civilians and civilian objects, or not directing a nuclear weapon against a specific military objective, would violate the principle of distinction. Using nuclear weapons against military objectives located in or near populated areas would violate the prohibitions against indiscriminate and disproportionate attacks.

23. Even the use of a low-yield weapon against a military objective in a remote area would have horrific effects on combatants. Those include damage to the central nervous system and to the gastrointestinal tract and an increased risk of developing certain cancers. The injuries, illnesses, permanent disabilities and lifelong suffering caused by radiation exposure make it extremely doubtful that nuclear weapons could be used in accordance with the rule prohibiting weapons of a nature to cause superfluous injury or unnecessary suffering.

24. We now know that the use of even a single nuclear weapon can cause significant and long-term damage to the natural environment over a wide area because of the spread and impact of dust, soot and radioactive particles on the atmosphere, soil, water, plants and animals. This makes it extremely doubtful that any such use could respect the rule of proportionality, which protects the natural environment as a civilian object from excessive incidental damage, or the obligation that means and methods of warfare be employed with due regard to the protection and preservation of the natural environment.

25. As noted in the preamble to the Prohibition Treaty, any use of nuclear weapons would be abhorrent to the principles of humanity and the dictates of public conscience. By implying the possibility of actually using nuclear weapons, in the view of ICRC, any threat to use them is also abhorrent to the principles of humanity and the dictates of public conscience.

### **Conclusions and recommendations for the first Meeting of States Parties**

26. The universalization and effective implementation of the Prohibition Treaty will require States parties, signatory States, the International Red Cross and Red Crescent Movement and international and civil society organizations to make individual and concerted collective efforts.

27. ICRC hopes that the practice of States parties will further clarify and solidify the scope and practical implications of the provisions of the Prohibition Treaty and ensure that they are understood in a coherent, comprehensive people-centric manner, in order to fully achieve the Treaty's object and purpose.

28. ICRC recommends that States parties use the opportunity provided by the first Meeting of States Parties to:

(a) Adopt a political declaration, whereby they:

- reiterate their deep concern about the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirm the need for all States to comply at all times with applicable international law, including international humanitarian law;
- call upon all States never to use nuclear weapons under any circumstances;
- call upon all nuclear-weapon States, and those that rely on nuclear weapons in their security postures, to urgently take all necessary nuclear risk reduction measures, including measures to diminish the role of nuclear weapons in their military doctrines, steps to remove nuclear weapons from high operational alert and the necessary actions to implement effectively all other relevant commitments undertaken under the 2010 Non-Proliferation Treaty action plan;

- condemn any threat of use of nuclear weapons, whether it be explicit or implicit, irrespective of the circumstances;
- commit to increasing public awareness of the risks and the catastrophic impact of any nuclear detonation, including through disarmament education and the work of international and civil society organizations;
- commit to continuing and strengthening efforts, both within and outside the framework of the Prohibition Treaty, to achieve the complete elimination of nuclear weapons and to reporting on progress at the second Meeting of the States Parties;

(b) Agree on deadlines for the elimination of nuclear weapons and for their removal from territory of a hosting State that are both realistic and appropriate in the light of the Prohibition Treaty’s object and purpose;

(c) Take all decisions necessary to establish a framework for the full and effective implementation of the Prohibition Treaty that is reflected, if possible, in the form of a comprehensive plan of action with concrete steps, including the following:

- establish the basic components of a competent international authority or authorities that will perform the tasks assigned to it by the Treaty and map out further work that is necessary for such an authority or authorities, to be designated;
- identify short- and long-term actions and objectives towards the universalization of the Prohibition Treaty, including steps to increase its membership and to strengthen its relevance in other nuclear disarmament and non-proliferation forums and debates.
- agree on a structure for producing, accessing and sharing scientific data, evidence and research relevant to the implementation of the Treaty, including the humanitarian consequences of nuclear weapons, the risks of use, technical aspects relevant for the elimination or conversion of nuclear weapons programmes, as well as the humanitarian response to assist victims and environmental remediation;
- map out the actions and measures necessary to ensure that the needs of victims of nuclear weapons use and testing are effectively met and that the affected environment is progressively remediated and commit to undertake those actions and measures in accordance with the principles of accessibility, inclusivity, non-discrimination and transparency;
- develop a meaningful and flexible intersessional process that allows for the implementation of the Treaty to be monitored and advanced in a timely and effective manner, with the participation and contribution of international organizations, the International Red Cross and Red Crescent Movement and civil society;

(d) Share progress on, and plans and objectives for, the implementation of the Prohibition Treaty and the sharing of lessons learned and good practices in this respect.

(e) Explore, develop and promote complementarity and synergies with the Non-Proliferation Treaty, together with all States parties to the Non-Proliferation Treaty, in particular with regard to, but not limited to, the obligations related to assisting victims and environmental remediation.