

# Nuclear weapons are now illegal

On 22nd January 2021, the Treaty on the Prohibition of Nuclear Weapons (TPNW) became part of international law. **Dr Philip Webber, SGR**, examines the implications of this new UN treaty.

When Donald Trump was US president, he withdrew the country from three major nuclear weapons treaties – the JCPOA (as known as the Iran nuclear deal), the Intermediate-range Nuclear Forces (INF) Treaty (leading to its dissolution), and the Open Skies Treaty. Although his record was particularly poor, very little progress has been made with numerous international nuclear agreements in recent years.<sup>1</sup> The purpose of the TPNW, agreed by 122 states at the United Nations in July 2017, is to definitively change this.<sup>2</sup> While, in a strict legal sense, the TPNW only applies to states that ratify or accede to it – i.e. join – the intention is to create a new international legal norm that all aspects of nuclear weapons are illegal because of their capacity to cause irreparable, catastrophic harm to people across the globe.<sup>3</sup> Before the TPNW, nuclear weapons had an almost protected status in international law. The treaty corrects this and puts them in the same ‘taboo’ class as chemical and biological weapons, along with anti-personnel mines.

For decades, the five original nuclear weapon states – Russia, the USA, China, France, and the UK (known as the P5) – and the newer nuclear states – India, Pakistan, Israel and North Korea – dominated and controlled discussions about nuclear weapons. Unsurprisingly, but hypocritically, they argued that they had unique security concerns for which they had to retain their nuclear weapons: these unique concerns simply being the other states with nuclear weapons. They also developed complicated legal justifications for their nuclear policies. For example, they variously argued that they did not intend to actually use their nuclear weapons or they would only hit military targets or they would just carry out a ‘limited’ strike. All these former justifications are swept away by the TPNW and a wealth of scientific evidence of immense nuclear harms, including key materials published by SGR and its predecessor organisations.<sup>4</sup> In response, Russia, the US, France and the UK actively coordinated their opposition to the TPNW, even at one point staging a protest outside of the UN chamber. It appeared to be clear that the only thing greater than the nuclear states’ fear of nuclear annihilation was a fear that they would no longer be able to threaten it.

## What difference will the TPNW make?

The nuclear states and their allies – a further 30 or so countries – mainly in NATO or the former Soviet bloc – argue that the TPNW does not apply to them. They haven’t signed it. They also argue that the TPNW undermines the likelihood of progress towards disarmament under the Nuclear Non-Proliferation Treaty (NPT). In disarmament terms, the NPT has been undermined by the nuclear states for at least 25 years, so it is hard to take such arguments seriously. In reality, the TPNW text was carefully written to complement the NPT and, by setting out a clear path for disarmament for signatories, represents a



substantive contribution to the nuclear disarmament clauses of the NPT.

At the time of writing, the TPNW has been ratified by 54 countries.<sup>5</sup> These include some of the world’s most populous nations such as Nigeria, Bangladesh, Mexico, the Philippines, Vietnam and South Africa – as well as smaller industrialised nations including Ireland (now on the UN Security Council), Austria, and New Zealand, and Pacific islands states, some of which were victims of nuclear testing. The combined population of these countries has passed one billion people. Over 30 more countries have so far signed the treaty, including Brazil and the Democratic Republic of Congo. More are expected to join in due course. Roughly two thirds of all countries have expressed their opposition to nuclear weapons, by supporting the new treaty during UN negotiations and/or by being part of existing nuclear weapon-free zones.

The TPNW has already changed the ethical status of nuclear weapons within the international financial system. Following detailed research published in the ‘Don’t Bank on the Bomb’ reports,<sup>6</sup> several large pension funds and other financial bodies have withdrawn investment from companies involved in the manufacture of nuclear weapons. The treaty bans all such support, and hence this is influencing the ethical investment screening in this sector.

A further effect is that some NATO countries, for example, Spain,<sup>7</sup> have started considering subtle changes to their stances on nuclear weapons policy.

The treaty is also re-invigorating civil society opposition to nuclear weapons. Many polls in European countries show increased support for the elimination of nuclear weapons – in particular, there is growing opposition to the continued deployment of US nuclear bombs on the continent. Over 400 cities have also declared their support for the treaty – including many in nuclear weapons states – for example: Barcelona, Paris, Berlin, Washington DC, Manchester, Edinburgh and Leeds. These cities are in turn pressing their national governments to sign up to the TPNW.

## What next?

The TPNW should be seen as a step towards a safer world.

While the new US Biden Presidency will not recognise the TPNW, there are some signs of limited progress. For example, one of Biden’s first actions in office was to agree with Russia to extend New START, the only treaty left limiting the numbers of nuclear weapons in these two most heavily-armed nations. There is also hope that the US will re-join the Iran nuclear deal and the Open Skies Treaty. The second impeachment of Trump has reminded >>

» the American people that he, like all other US presidents, had the sole authority to launch a nuclear strike, hence proposals to ensure that any such order would require multiple authorisation have been revived. In addition, a new bill has been introduced into the Senate proposing that the USA adopts a ‘no first use’ policy.<sup>8</sup> From the point of view of those desiring a world without nuclear weapons – to get rid of nuclear weapons before they get rid of us – requiring multiple permissions to destroy the world would represent very limited progress. But it would at least remove the possibility of a sole crazed leader initiating a nuclear strike.

Turning to the UK, PM Boris Johnson shocked opponents and allies alike in March when he unexpectedly announced an increase in the nation’s nuclear weapons stockpile for the first time since the end of the Cold War.<sup>9</sup> The stockpile ceiling for 2025 is to be increased from 180 to 260 warheads – a staggering 44% rise.<sup>10</sup> This increase was widely condemned as breaching international law,<sup>11</sup> especially as it was accompanied by a broadening of the UK threat to use nuclear weapons to deter potential attacks by ill-defined non-nuclear “emerging technologies”, including via cyber-space.<sup>12</sup> A UN spokesperson said Britain’s actions were “contrary to its obligations under article six of the NPT and could have a damaging impact on global stability and efforts to pursue a world free of nuclear weapons”.<sup>13</sup>

In contrast, there is a realistic prospect for change in nuclear weapons policy arising from the Scottish National Party (SNP). Not only are they completely opposed to Scotland’s ‘hosting’ of UK nuclear weapons – at the Clyde Naval Base not that far from Glasgow – they currently form Scotland’s government. Having been re-elected in May with a larger number of parliamentary seats, and opposition to hosting these weapons fuelling support for a referendum on independence in the near future, things could change significantly in the coming months and years.

The central problem, of course, remains the commitment of the governments of the nine nuclear weapons states to nuclear deterrence – and the consequent huge expenditures that all have recently allocated for nuclear ‘modernisation’, including new destabilising technologies such as hypersonic missiles, widespread satellite surveillance, and new nuclear ‘fuses’. All of these seriously undermine the NPT, let alone the TPNW.

Nevertheless, the entry into force of the TPNW opens a new phase in the history of nuclear weapons, offering a more hopeful path for the future. It came about through concerted

campaigning by civil society – especially the International Campaign for the Abolition of Nuclear Weapons (ICAN), highly deserving of its award of the Nobel Peace Prize – and will continue to focus minds on a more international perspective and away from dominance by the nuclear powers. There are already majorities across both governments and civil society which recoil from the dangerous doctrine of nuclear deterrence – the idea that security can be achieved by endlessly threatening annihilation despite the possibility of human or machine failure – and accept that real security can only be gained through cooperation and compromise. Common, real, human, security.

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## References

- 1 The most important are the Nuclear Non-Proliferation Treaty (NPT), the Comprehensive Test Ban Treaty (CTBT), and the Fissile Material Cut-off Treaty (FMCT).
- 2 The TPNW is comprehensive. Instead of vague intentions to disarm at some unspecified point in the future, such as in the NPT, the TPNW clearly states that all aspects of nuclear weapons are illegal. It bans the development, testing, production, manufacture, possession, transfer, use or threat of use, deployment, installation or stationing of nuclear weapons and other nuclear explosive devices, as well as assistance, encouragement or inducement of any of these prohibited activities. It also sets out pathways for disarmament for signatories. See: ICAN (2017). [https://www.icanw.org/full\\_text\\_of\\_the\\_treaty](https://www.icanw.org/full_text_of_the_treaty)
- 3 SGR has documented this harm in depth in previous articles and reports, see: SGR (2021). <https://www.sgr.org.uk/projects/nuclear-weapons-threat-main-outputs>
- 4 As note 3.
- 5 ICAN (2021). [https://www.icanw.org/signature\\_and\\_ratification\\_status](https://www.icanw.org/signature_and_ratification_status)
- 6 Don’t Bank on the Bomb (2021). <https://www.dontbankonthebomb.com/>
- 7 ICAN (2018). [https://www.icanw.org/could\\_spain\\_be\\_the\\_first\\_nato\\_state\\_to\\_sign\\_the\\_nuclear\\_ban\\_treaty](https://www.icanw.org/could_spain_be_the_first_nato_state_to_sign_the_nuclear_ban_treaty)
- 8 Warren E (2021). <https://www.warren.senate.gov/imo/media/doc/No%20First%20Use%202021.pdf>
- 9 See further discussion of this issue in: Parkinson S (2021). <https://www.sgr.org.uk/resources/brexit-britain-s-security-policy-cutting-aid-spend-weapons>
- 10 HM Government (2021). <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>
- 11 The Independent (2021). <https://www.independent.co.uk/news/uk/politics/boris-johnson-uk-nuclear-weapons-international-law-b1817827.html>
- 12 The Guardian (2021). <https://www.theguardian.com/politics/2021/mar/16/defence-review-uk-could-use-trident-to-counter-cyber-attack>
- 13 United Nations (2021). <https://www.unmultimedia.org/tv/unifeed/asset/2608/2608243/>

## Are UK universities being drawn into developing autonomous weapons?

The UK government refuses to support a treaty to regulate lethal autonomous weapons systems, preferring instead to expand military R&D, including at universities. But, argues **Leyla Manthorpe Rizatepe**, these same universities could become a further focus of protest.

Since 2012, the Campaign to Stop Killer Robots has advocated the pre-emptive ban on the development, production and use of lethal autonomous weapons systems (LAWS). Persuasive moral, ethical, security, legal, and technological concerns have seen the Campaign gather widespread support, including from Scientists for Global Responsibility. The global coalition comprises over 140 non-governmental organisations. In addition, 30 countries, as well as the Non-Aligned Movement, have declared their support for a legally binding instrument to regulate LAWS, and over 4500 experts in artificial intelligence (AI) and robotics have called for a treaty to prohibit LAWS.<sup>1</sup> Even UN Secretary-General Antonio Guterres has described LAWS as ‘morally repugnant and politically unacceptable’.<sup>2</sup>