

National Interest Analysis – Nuclear Weapon Prohibition Treaty

Executive summary

1 The Treaty on the Prohibition of Nuclear Weapons (the Treaty) is a landmark legally-binding international instrument prohibiting the use of nuclear weapons and related activities. It was adopted by the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination on 7 July 2017. The Treaty opened for signature at the United Nations Headquarters in New York on 20 September 2017 during a high-level signing ceremony. New Zealand signed the Treaty on 20 September 2017. New Zealand is now seeking to undertake the binding treaty action of ratification.

2 The Treaty represents a significant and necessary step on the pathway towards achieving a nuclear weapon-free world. It prohibits the use and threat of use of nuclear weapons, as well as their development, testing, production, manufacture, possession, stockpiling and transfer. It also prohibits the provision of assistance relating to nuclear weapons and prohibits States Parties from allowing any stationing, installation or deployment of nuclear weapons on their territory.

3 New Zealand's ratification of the Treaty would make a valuable contribution to nuclear disarmament and non-proliferation and would reiterate our long-held belief that non-nuclear weapon States have a legitimate role to play in the pursuit of a world without nuclear weapons. It would also reflect New Zealand's view that the *status quo* on nuclear disarmament is unstable and unsustainable and risks inviting the proliferation of nuclear weapons and unravelling the 1968 *Treaty on the Non-Proliferation of Nuclear Weapons*. Against the backdrop of our existing national legislation and membership of other nuclear disarmament and non-proliferation treaties (including the South Pacific Nuclear Free Zone Treaty) ratification of the Treaty would be a natural progression of our long-standing and bipartisan anti-nuclear policy and our broader international efforts on disarmament and humanitarian issues.

4 While New Zealand has signed the Treaty, it does not bind New Zealand until New Zealand ratifies it.

Nature and timing of the proposed treaty action

5 The *Treaty on the Prohibition of Nuclear Weapons* was adopted by the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination on 7 July 2017. It was opened for signature during a high-level signing ceremony at the United Nations Headquarters in New York on 20 September 2017. New Zealand signed the Treaty on this date,

along with 49 other States, including Fiji, Kiribati, Palau, Samoa, Tuvalu and Vanuatu from the Pacific.

6 The Treaty is subject to ratification, acceptance or approval and is open for accession (Article 14 of the Treaty). The Treaty will enter into force 90 days after the 50th instrument of ratification, acceptance, approval or accession has been deposited. This is likely to occur within the next year or two. To date 58 States have signed the Treaty and 7 have ratified it.

7 New Zealand is currently consulting with Tokelau as to whether it would like New Zealand's ratification of the Treaty to extend to Tokelau.

Reasons for New Zealand becoming Party to the Treaty

8 The Treaty represents an important step towards a world-free of nuclear weapons, which has been a long-held goal for New Zealand. Its adoption marked a victory for those states that have remained committed to the establishment of a legal prohibition on nuclear weapons 70 years since the first United Nations General Assembly resolution called for their abolition in 1946. It reinforces the general undertaking which nuclear powers have made ultimately to abandon their arsenals, and contributes to the implementation of the obligation on all parties to the 1968 *Treaty on the Non-Proliferation of Nuclear Weapons* (Nuclear Non-Proliferation Treaty) to pursue disarmament negotiations in good faith.

9 In putting in place a global prohibition on nuclear weapons, the Treaty fills a gap in the legal architecture for nuclear disarmament by matching the prohibition which has been in place for some time on both other types of weapons of mass destruction (chemical and biological weapons) and goes some way towards establishing a credible and comprehensive norm against nuclear weapons.

10 New Zealand's early ratification of the Treaty would be a fitting conclusion to our active engagement in its negotiation and adoption. We voted in favour of United Nations Resolution 71/268 in December 2016 to begin negotiations on the Treaty; we were one of the seven Vice-Presidents of the negotiations; we voted in favour of the adoption of the Treaty text at the negotiating Conference on 7 July 2017; and we signed the Treaty on 20 September 2017. It would also be consistent with New Zealand's long-standing bi-partisan position on nuclear disarmament, as reflected in our domestic nuclear-free policy and legislation (notably the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987 (the Act)) and our efforts to halt nuclear testing in the Pacific.

11 Ratification of the Treaty by New Zealand would be consistent with New Zealand's role in international disarmament efforts and our broader efforts on humanitarian, disarmament and non-proliferation issues. It would signal New Zealand's firm commitment to nuclear disarmament and our belief that the

Treaty will make a valuable contribution to the eventual elimination of nuclear weapons.

12 New Zealand's ratification of the Treaty, if one of the first 50 to do so, will help advance its entry into force and would also promote its standing and its ability to influence the international debate on nuclear disarmament and non-proliferation.

Advantages and disadvantages to New Zealand of the Treaty entering into force and not entering into force for New Zealand

13 The Treaty's entry into force would be fully consistent with the purposes and principles of New Zealand's own domestic legislation - the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987 - and would help promote the long-held aspirations of the New Zealand Government and people for a nuclear weapon-free world.

14 There are also advantages to New Zealand ratifying the Treaty early. The first Meeting of States Parties to the Treaty must take place within one year of the Treaty's entry into force. That Meeting will be required to decide a number of important procedural and administrative issues including the Rules of Procedure for Meetings of States Parties (for example, whether the regime will be best served by enabling decisions by a vote rather than by consensus).

15 Only those States that have ratified the Treaty will be able to take part in decision-making at that meeting. It is in New Zealand's interests to be able to play a constructive and influential role in shaping the direction of the Treaty from its inception and to be able to take part in the very important decision-making at its first Meeting of States Parties.

16 The Treaty does not enjoy the support of any of the States that currently possess nuclear weapons or their military allies. These States did not participate in the negotiations although the Treaty leaves open the possibility that they can join the Treaty at any point when they might wish to do so. The main argument used against the Treaty is that it could undermine or detract attention from the Nuclear Non-Proliferation Treaty as the cornerstone international agreement on nuclear disarmament and non-proliferation. New Zealand disagrees on this point. We see the Treaty as a welcome and necessary progression in nuclear disarmament efforts and one that reinforces the Nuclear Non-Proliferation Treaty, in particular by strengthening its obligation not to develop nuclear weapons and carrying forward implementation of its nuclear disarmament undertaking.

17 The Treaty also complements the Comprehensive Nuclear Test Ban Treaty as well as the network of regional treaties which have established nuclear weapon-free

zones, including our own *South Pacific Nuclear Free Zone Treaty* (the Treaty of Rarotonga).

18 A decision not to ratify the Treaty would be inconsistent with New Zealand's engagement in negotiations on the Treaty and our signature of the Treaty. It would also be inconsistent with our long-standing and bi-partisan approach to nuclear disarmament and our reputation as a leading voice on international humanitarian, disarmament and non-proliferation issues.

Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the Treaty, and an outline of any dispute settlement mechanisms

Legal obligations which would be imposed on New Zealand by the treaty action

19 Article 1 (**Prohibitions**) lists all of the activities that States Parties to the Treaty are not allowed to engage in. Each State Party to the Treaty undertakes never under any circumstances to:

- Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
- Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- Use or threaten to use nuclear weapons or other nuclear explosive devices;
- Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Treaty;
- Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under the Treaty;
- Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.

20 Article 2 of the Treaty, requires **declarations** by all States Parties not later than 30 days after the Treaty enters into force for that Party as to whether the Party:

- Possessed nuclear weapons but eliminated them before joining the Treaty;
- Continues to possess nuclear weapons; or
- Hosts nuclear weapons anywhere on their territory.

21 Article 3 on **safeguards** requires all States Parties to maintain at least the same standard of nuclear safeguards that they already have in place pursuant to the Nuclear Non-Proliferation Treaty at the time of entry into force for them of this Treaty

(except those which had, or continue to have, nuclear weapon programmes or host nuclear weapons in their territory, and which have higher safeguards obligations set out in Article 4).

22 Article 4 (**towards the total elimination of nuclear weapons**) allows countries which had, or continue to have, nuclear weapon programmes or host nuclear weapons in their territory to join the Treaty. It seeks to provide a credible pathway for ensuring that those States Parties will comply – and be known to comply – with the prohibitions in Article 1 over time. In summary:

- Those States that possessed nuclear weapons after the adoption of this Treaty and eliminated them before joining the Treaty are required to conclude a safeguards agreement (equivalent to an Additional Protocol) to verify this with the International Atomic Energy Agency, within a specified timeframe;
- Those States that possess nuclear weapons are required to immediately remove them from operational status and to destroy them in accordance with a plan to be approved by the Meeting of States Parties, and to conclude a safeguards agreement (equivalent to an Additional Protocol) to verify this with the International Atomic Energy Agency, within a specified timeframe; and
- Those States that host nuclear weapons are required to remove them from their territory within a specified timeframe.

23 Article 5 of the Treaty requires each State Party to take measures on **national implementation** to prevent and suppress any activity prohibited to a State Party under the Treaty by persons or on territory under its jurisdiction or control.

24 Article 6 (**victim assistance and environmental remediation**) requires States Parties whose persons or territory have been affected by the use or testing of nuclear weapons to provide adequate assistance (including medical care and psychological support) and to take all necessary and appropriate measures towards the environmental remediation of contaminated areas.

25 Article 7 (**international cooperation and assistance**) provides that States Parties in a position to do so must provide assistance to States Parties that have been affected by nuclear weapons or nuclear testing, for the victims of nuclear weapons or other nuclear explosive devices, and to further the implementation of the Treaty. This assistance may be provided bilaterally, or through a variety of international, regional and national organisations.

26 Article 7(6) also recognises that, without prejudice to any other duty or obligation that they may have under international law, States Parties that have used or tested nuclear weapons have a responsibility to provide adequate assistance to affected States Parties for the purpose of victim assistance and environmental remediation.

27 The Treaty also requires States Parties to encourage other States to join it, with a view to achieving **universality** (Article 12).

The position in respect of reservations

28 Article 16 of the Treaty provides that the Articles of the Treaty shall not be subject to reservations. This ensures that reservations that would undermine the Treaty's provisions cannot be made.

Outline of dispute settlement mechanisms

29 Article 11(1) of the Treaty provides that any disputes regarding the interpretation or application of the Treaty are to be resolved through consultation between States Parties with a view to the settlement of the dispute by negotiation or by other peaceful means of the parties' choice in accordance with Article 33 of the Charter of the United Nations.

30 Article 33(1) of the Charter of the United Nations outlines various means by which disputes which are likely to endanger the maintenance of international peace and security can be peacefully resolved. These include mediation, arbitration, resort to regional agencies or arrangements, or other peaceful means of their own choice.

31 The meeting of States Parties may also contribute to the settlement of a dispute in accordance with Article 11(2) of the Treaty.

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

32 New Zealand is able to ratify the Treaty in good faith without the need for legislative change. Existing policies and laws, primarily the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987 but supplemented by the general criminal law, other statutes and existing policies and administrative measures, provide an acceptable basis for implementing the Treaty's provisions.

Economic, social, cultural and environmental costs and effects of the treaty action

33 New Zealand already complies with the key obligations in the Treaty pursuant to the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987. Therefore, we do not anticipate that ratification will have any significant economic, social, cultural and environmental costs or effects for New Zealand.

34 New Zealand's ratification will reinforce New Zealand's opposition to the serious humanitarian consequences of nuclear weapons and the devastating impact of nuclear weapons testing and related activities on regional and international security and development, including in vulnerable areas such as the Pacific.

The costs to New Zealand of compliance with the Treaty

35 Additional costs which New Zealand can expect to incur as a party to the Treaty would be those resulting from assessed contributions (in accordance with the United Nations scale of assessment as adjusted in line with membership of the Treaty) for the cost of periodic Meetings of State Parties and Review Conferences. These are expected to be minimal and will be met from within the existing baseline for International Subscriptions.

36 New Zealand's existing standard of care to New Zealanders affected by nuclear testing (including public healthcare and pensions for nuclear test veterans) is considered to meet the adequacy standard in the Treaty (Article 6: Victim Assistance). Accordingly ratifying the Treaty is unlikely to incur any additional costs in terms of victim assistance.

37 The Treaty also contains an expectation (under Article 7: International cooperation and assistance) that State Parties "in a position to do so" shall provide assistance to other State Parties affected by nuclear weapons use or testing" but any such contribution – and its nature - would be entirely at New Zealand's discretion.

Completed or proposed consultation with the community and parties interested in the treaty action

38 Throughout the negotiations on the Treaty – and in the period since its conclusion – the New Zealand Government has maintained close contact with the range of New Zealand non-governmental organisations interested in this issue. Consultations have been undertaken, including with the International Campaign to Abolish Nuclear Weapons Aotearoa New Zealand, The Disarmament and Security Centre, The Peace Foundation, and a number of interested New Zealand academics. All Non-Governmental Organisations and civil society consulted have been supportive of New Zealand signing and ratifying the Treaty.

39 The Public Advisory Committee on Disarmament and Arms Control provided financial support for the attendance of three New Zealanders at the final negotiating Conference of the Treaty from 15 June to 7 July 2017 and wrote to the previous government urging signature of the Treaty.

40 The following agencies were consulted in the drafting of this National Interest Analysis: New Zealand Customs Service, the Ministry of Justice, New Zealand Defence Force, Ministry of Defence, Department of Prime Minister and Cabinet (PAG, SIG), New Zealand Police.

Subsequent protocols and/or amendments to the Treaty and their likely effects

41 The Treaty anticipates the possibility of subsequent protocols. In particular, Article 8(1)(b) provides that a Meeting of States Parties can develop further measures for the elimination of nuclear weapons, including additional protocols to the Treaty. This is seen as providing an alternative option for accession by nuclear weapon States to the procedure set out in Article 4, for example, should a group of nuclear weapon States wish to join the Treaty together.

42 The Treaty also provides for amendment under Article 10. Pursuant to this Article, amendments may be proposed by any State Party after the entry into force of the Treaty. If a majority of States Parties support further consideration of a proposed amendment, it would be considered at the next meeting of States Parties or review conference. Amendments would then be adopted at the meeting or review conference by a two-thirds majority vote of the States Parties. An amendment would enter into force for a State Party 90 days after it deposits an instrument of ratification or acceptance of the amendment with the Depository, provided that a majority of States Parties (as at the time of adoption) have deposited instruments of ratification or acceptance of the amendment with the Depository.

43 Any subsequent protocols or amendments would not enter into force for New Zealand automatically: acceptance of any new protocols or amendments to the Treaty would be subject to New Zealand's domestic treaty-approval process.

Withdrawal or denunciation provision in the Treaty

44 Article 17 allows a State Party to withdraw from the Treaty in limited circumstances. A State Party seeking to withdraw must give notice to the Depositary that extraordinary events related to the subject matter of the Treaty have jeopardised its supreme interests. Withdrawal would then take effect 12 months after the receipt of the notification of withdrawal by the Depositary. However, if the withdrawing State Party is party to an armed conflict, the State Party remains bound by the Treaty until it is no longer party to an armed conflict.

45 Article 17 is broadly in line with other disarmament treaties, including the Nuclear Non-Proliferation Treaty.