

What will we ban?

The question of scope is a key question for the negotiations. What will be banned under the treaty? Negotiators will have to decide what general prohibitions to include in the new treaty. Remembering that this treaty comes from the need to prohibit weapons designed to be inhumane and indiscriminate should remain a guiding principle.

Key Principles

PAX is a member of the International Campaign to Abolish Nuclear weapons, ICAN, which has laid out principles for a nuclear ban. In those principles, the campaign recommends states negotiate a non-discriminatory international legal instrument that would prohibit all activities related to making, getting, having or using nuclear weapons. In other words, activities like development, production, testing, acquisition, stockpiling, transfer, deployment, threat of use, or use of nuclear weapons need to be banned. In addition, helping to do these prohibited acts, through assistance, investment, encouragement, or inducement should of course also be prohibited.

The Open Ended Working Group on taking forward multilateral nuclear disarmament negotiations in 2016, suggested the scope of a prohibition could include prohibitions on the development, testing, including subcritical experiments and supercomputer simulations, production, acquisition, possession, stockpiling, transfer, use and threat of use of nuclear weapons, as well as on the production of weapons-usable fissile material.

Previous agreements

The new legally binding prohibition on nuclear weapons will reinforce and build upon existing instruments, including the nuclear Non Proliferation Treaty (NPT) and the Nuclear Weapon Free Zone treaties. The NPT, while successful in minimizing nuclear weapon proliferation has some perceived problems- not least the absence of a comprehensive prohibition, for all States, on items like the development and production – or making of- nuclear weapons. The two tiered system within the NPT leaves room for nuclear weapon modernisation programmes, new nuclear weapon capability development, and production of additional weapons. The new instrument, building on the NPT and other agreements as a starting point, can address some of these issues more emphatically, strengthening the non proliferation regime and actually making nuclear weapons illegal.

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What is a nuclear weapon?

Questions about definitions also arise during negotiations, and are sometimes considered in relation to the question of scope. The OEWG used the same definition as the Treaty of Tlatelolco (Latin American Nuclear Weapon Free Zone). In Article 5 of that Treaty, nuclear weapons are defined as:

“any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.”

In 2015, five of the nine nuclear armed states released a Glossary on Nuclear Terms. That document defined a nuclear weapon as a:

“Weapon assembly that is capable of producing an explosion and massive damage and destruction by the sudden release of energy instantaneously released from self-sustaining nuclear fission and/or fusion.”

Negotiators will decide the scope of the treaty, including whether or not to include a specific definition of what actually constitutes a nuclear weapon. It is interesting to note that several treaties related to nuclear weapons, notably the NPT and the **CTBT do not** explicitly define nuclear weapons within the treaty text. This too is an option for negotiators of the ban treaty.

Nuclear Weapon Free Zones

This year is the 50th anniversary of the first regional nuclear weapons ban- the Treaty of Tlatelolco. The Latin American Nuclear Weapon Free Zone agreement pre-dates the NPT, and this looks at some lessons that can be learned from Nuclear Weapon Free Zone agreements as we prepare for the global nuclear ban.

There are five regional nuclear weapon free zone (NWFZ) treaties in place-

- Treaty of Tlatelolco — Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
- Treaty of Rarotonga — South Pacific Nuclear Free Zone Treaty
- Treaty of Bangkok — Treaty on the Southeast Asia Nuclear Weapon-Free Zone
- Treaty of Pelindaba — African Nuclear-Weapon-Free Zone Treaty
- Treaty on a Nuclear-Weapon-Free Zone in Central Asia

Mongolia is also a self-declared free zone, recognised by the UN General Assembly in resolution 55/33S. There are also treaties that deal with the Antarctic, Outer Space, the Moon, and the Seabed.

A significant part of the world is covered by these agreements. However, nuclear weapons do not limit themselves to any borders, and the use of nuclear weapons by states in the northern hemisphere could have catastrophic consequences- even on the citizens of States living in the nuclear weapon free zone areas.

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What is consistent across the zones?

All of the five regional zones prohibit the production of nuclear weapons, stationing or deployment, acquisition or control of nuclear weapons. Each of these treaties also includes prohibitions on assisting with any of these acts, though these vary in detail depending on the different treaty (and also likely depending on when it was negotiated).

All of these five zones also request signature and ratification by not only the regional parties, but also contain special protocols for the nuclear weapon states. This continues the practice of a two tiered systems of nuclear weapons law- and reinforces the need for a global prohibition that does not distinguish between past possession practices of States parties.

The Central Asian treaty (Semipalatinsk) is the most recently negotiated. It sums up the consistency across the five zones in its preamble:

Recognizing that a number of regions, including Latin America and the Caribbean, the South Pacific, South-East Asia and Africa, have created nuclear-weapon-free zones, in which the possession of nuclear weapons, their development, production, introduction and deployment as well as use or threat of use, are prohibited, and striving to broaden such regime throughout the planet for the good of all living things

What is different?

As time progressed from the 1967 Tlatelolco treaty to the 1985 Rarotonga, 1995 Bangkok, 1996 Pelindaba and on through the 2006 Semipalatinsk treaty several issues emerged that were not in the agreement conducted fifty years ago this week. This is far from surprising, and reinforces the notion of disarmament law as evolving and adapting to new circumstances.

An example of this is the prohibition in the Pelindaba Treaty of research nuclear weapon research. This goes further than the other treaties, and is likely a result of lessons learned from the experience with South African decommissioning of their nuclear weapons programme.

The Semipalatinsk treaty also requires assistance towards remediation of areas contaminated as a result of past activities. The treaty gets its very name from the highly contaminated former Soviet nuclear test site. The development of nuclear weapons left behind more than traces of toxicity. In some places, you can still see the pockmarked landscape from nuclear testing. Those living near nuclear test sites, and other nuclear weapon development facilities- in Australia, Algeria, China, the Pacific Islands, Russia and the US for example, continue to be impacted by the legacy of nuclear weapon development. Only the Central Asian NWFZ treaty starts to address these questions.

Another difference across the treaties are the enforcement mechanisms. Tlatelolco established the Organisation for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), while Pelindaba would bring questions to the African Commission on nuclear energy. Three of the five agreements would refer disputes to the International Court of Justice, while the IAEA, UN Security Council and UN General Assembly are mentioned as possible arbiters in the Bangkok treaty.

What next?

States will need to figure out how to deal with some of the differences that have emerged in the fifty years of regional nuclear weapon prohibitions, but it is clear that the baseline for those negotiations must build on the existing prohibitions. Lessons from later

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negotiations can and should strengthen the new treaty. Currently, some NATO members are party to Nuclear Weapon Free Zone agreements because of some territories lying within the geographical zones. In some cases this has likely been confusing and difficult for some States (like those with overseas territories within the zones). There are a lot of opportunities to regain global consistency with the upcoming negotiations, and ensure that this prohibition seizes the opportunity to build a legal basis for achieving and maintaining a world without nuclear weapons.

Conclusion

Building on the nuclear weapon free zones and the NPT as a baseline or starting point would bring the majority of states in the world into general agreement. Regional zones have strengthened non-proliferation, increased security and protected populations. However, there are still many outside the zones, and there is scope to reflect the evolution of disarmament law. During the ban negotiations, states should consider how they will address the rights of those affected by nuclear weapons, make sure the financial pathways to nuclear weapon producers are closed off, and clarify that no states or entity has a right to put populations at risk by the ongoing possession and modernisation of nuclear arsenals.

About the program

No Nukes is PAX's campaign for a world free of nuclear weapons. No Nukes seeks opportunities to strengthen the global non-proliferation regime and to accelerate global nuclear disarmament by stigmatizing, outlawing and eliminating nuclear weapons

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