

TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

WRITTEN ANALYSIS

1.0 INTRODUCTION

- 1.1 The Treaty for the Prohibition of Nuclear Weapons (Treaty) sets out a comprehensive set of prohibitions against participating in any nuclear weapon activities. These include undertakings by member States to the Treaty not to develop, test, produce, acquire, process, stockpile, use or threaten to use nuclear weapons. The Treaty also prohibits the deployment of nuclear weapons on national territory and the provision of assistance to any State in the conduct of prohibited activities.
- 1.2 States Parties are obliged to prevent and suppress any activity prohibited under the Treaty undertaken by persons or on territories under its jurisdiction or control. The Treaty also obliges States Parties to provide adequate assistance to individuals affected by the use or testing of nuclear weapons, as well as to take necessary and appropriate measure of environmental remediation in areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons.
- 1.3 Fiji was one of the countries that signed the Treaty at the margins of the 72nd Session of the United Nations General Assembly on 20 September 2017. The Treaty is currently not in force. It will enter into force 90 days after the fiftieth instrument of ratification, acceptance, approval or accession has been deposited. There are currently only 35 States Parties to the Treaty.
- 1.4 The Treaty complements the existing nuclear disarmament instruments namely the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the Comprehensive Nuclear-Test-Ban Treaty (CTBT) and establishes general prohibitions and obligations as well as political commitment to achieve and maintain a nuclear-weapon free world.

2.0 SUMMARY OF THE CONVENTION

- 2.1 The Treaty contains a total of 20 Articles of which none can be subject to reservations. (*See Article 16 on Reservations*).

- 2.2 Article 1 prohibits the development, testing, production, manufacture, acquisition, possession, stockpiling, stationing, transfer, receipt, control of, use and threat of use of nuclear weapons or other nuclear explosive devices. Article 1 also prohibits each State Party from assisting or encouraging others, or receiving assistance from others to engage in prohibited activities and prevents States Parties from allowing the stationing, installation or deployment of nuclear weapons or other explosive devices within their territory or any place within their jurisdiction or control.
- 2.3 Article 2 requires each party to, within 30 days from the date the Treaty enters into force, declare whether it has previously owned, possessed or controlled nuclear weapons prior to the date the Treaty enters into force or whether it currently does.
- 2.4 Article 3 requires parties that do not possess nuclear weapons to maintain their existing International Atomic Energy Agency (IAEA) safeguards and, if they have not already done so, to conclude with the IAEA and bring into force a comprehensive safeguards agreement.
- 2.5 Article 4 sets out general procedures for negotiations with an individual nuclear armed State becoming party to the Treaty, including time limits and responsibilities. If that State has eliminated its nuclear weapons before becoming a party to the Treaty, an unspecified "competent international authority" will verify that elimination, and the State must also conclude a safeguards agreement with the IAEA to provide credible assurance that it has not diverted nuclear material and has no undeclared nuclear material or activities. If that State has not yet destroyed its arsenal, it must negotiate with that "competent international authority" a time-bound plan for the verified and irreversible elimination of its nuclear weapons programme, which it will submit to the next meeting of signing States or to the next review conference, whichever comes first.
- 2.6 Article 5 of the Treaty requires States Parties to undertake "appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under the Treaty.
- 2.7 Article 6 requires States Parties to adequately provide age and gender sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, to individuals under the State Party's jurisdiction who are affected by the use or testing of nuclear weapons, as well as provide for their social and economic inclusion. Article 6 also obligates

States Parties to undergo environmental remediation of contaminated areas within such States' jurisdiction.

- 2.8 Article 7 requires all States Parties to cooperate to facilitate the implementation of the Treaty, including seeking and receiving assistance from other States Parties to fulfill Treaty obligations and, if the State Party is in a position to do so, providing technical and financial assistance to States Parties affected by or victims of nuclear weapons. Fiji, with the support of other Pacific Island Countries and the Association of South East Asian Nations (ASEAN), made compelling interventions to ensure that 'State responsibility' was captured in the Treaty. The issue was adopted by the Conference as per Resolution 71/258 thereby ensuring that user States compensate victims of nuclear weapons and the environment to which damage was done as articulated in paragraph 6 of this Article.
- 2.9 Article 8 provides for meetings of States Parties to consider and take decisions in relation to the application and implementation of the Treaty, the costs of which are shared by the States according to the UN scale of assessment in accordance with Article 9. The first meeting of the States Parties shall occur one year after the Treaty enters into force. Meetings are on a biennial basis unless otherwise agreed by States Parties. Extraordinary meetings may be organised if at least a third of States Parties agree.
- 2.10 Articles 10–12 provide the processes for amendments to the Treaty, the settlement of disputes between 2 or more States Parties and the promotion of the goal of universal adherence of all States to the Treaty.
- 2.11 Articles 13–15 set out the processes for the Treaty to be open for signature (from 20 September 2017) at the UN headquarters in New York and states that the Treaty enters into force 90 days after the fiftieth instrument of ratification, acceptance, approval or accession.
- 2.12 Article 16 states that the Treaty shall not be subject to reservations.
- 2.13 Article 17 provides that the Treaty shall be of unlimited duration though each State Party shall have the sovereign right to withdraw from the Treaty if such State Party is of the view that the subject matter of the Treaty jeopardises the supreme interests of the country.
- 2.14 Article 18 provides that the Treaty shall not prejudice the obligations of States Parties under other agreements where such obligations are consistent with the Treaty.

- 2.15 Article 19 states that the Secretary-General of the United Nations is the Depositary of the Treaty and Article 20 requires the text of the Treaty to be in the 6 United Nations languages.

3.0 REQUIREMENTS FOR IMPLEMENTATION

- 3.1 Under Article 5 of the Treaty, States Parties are required to adopt necessary measures to implement obligations under the Treaty. As such States Parties are required to undertake “appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under the Treaty”.
- 3.2 Obligations for State Parties are expressly articulated under Article 1 of the treaty as follows:

Each State Party undertakes never under any circumstances to:

- (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
- (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
- (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
- (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;
- (g) 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.

- 3.3 As such the Treaty has a broad prohibition provision that specifically obligates each State Party to never, under any circumstances, “assist, encourage, or induce, in any way, anyone to engage in any activity” prohibited to a state-party under the treaty. States Parties will be obliged to prevent and suppress any activity prohibited under the Treaty undertaken by persons or on territory under its jurisdiction or control.
- 3.4 Ratification of the Treaty also reinforces Fiji’s commitment to the Comprehensive Safeguards Agreement (CSA) which Fiji signed with the International Atomic Energy Agency (IAEA) in 1973. Given that Fiji is a State Party to the Treaty on Non-Proliferation of Nuclear Weapons, Fiji is required to implement the IAEA’s CSA. The CSA requires States to declare and submit regular reports on their nuclear material and nuclear facilities, and to accept inspections and other measures by the IAEA to verify these declarations and reports.
- 3.5 Fiji has a Small Quantities Protocol in force which essentially reduces the burden of implementation of the provisions of the IAEA’s CSA given that Fiji is a State with little or no nuclear material. In 2006, Fiji also signed the Additional Protocol to the CSA which further strengthened provisions of the IAEA’s Safeguards Agreement and extends the authority of the IAEA to undertake relevant inspections of nuclear related activities.
- 3.6 The Treaty reaffirms the need for all States, at all times, to comply with applicable international law, including international humanitarian law. As such Fiji will be required to implement provisions of the Treaty through enacting of relevant national laws.
- 3.7 This would mean that Fiji would need to further develop its legislative framework to ensure that provisions of the Treaty and other related treaties are properly implemented. State Parties can access international assistance to ensure that they are fulfilling its obligations under the treaty. (See Article 7)

4.0 IMPACT OF THE CONVENTION

- 4.1 Fiji has continued to support regional disarmament platforms such as the South Pacific Nuclear Free Zone Treaty of Rarotonga (Raratonga Treaty) which bans the manufacture, acquisition, possession or control of nuclear devices within the Pacific.

- 4.2 Furthermore, this position is an extension of Fiji's acceptance of the regional and international nuclear disarmament instruments that seek to rid this planet of any nuclear threats. This includes the Treaty on the Non-proliferation of Nuclear Weapons which Fiji acceded to in 1972 and the Comprehensive Nuclear-Test-Ban Treaty which Fiji ratified in 1996.
- 4.3 Fiji clearly supports the initiative to ban nuclear weapons and to reduce the risk of its accidental, mistaken, unauthorised or intentional use on this planet given its catastrophic and humanitarian consequences. It should be noted that Fiji's position is the result of our first-hand experience of the destruction (Christmas Island veterans) and long lasting effects that nuclear weapons have had on Fijians who remain without victim assistance and reparation, as well as environmental degradation.
- 4.4 Ratifying the Treaty will promote cooperation and strengthen international relations with other States Parties who have acceded to or ratified the Convention and further Fiji's goal of ensuring a nuclear-weapon free world.

5.0 RECOMMENDATION

- 5.1 It is recommended that Fiji ratify the Treaty without reservations.