



INTERNATIONAL HUMAN RIGHTS CLINIC
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL

Submission to Alþingi Inquiry into Resolution 193/148, “Bann við kjarnorkuvopnum”

**From the Harvard Law School International Human Rights Clinic
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Introduction

1. The International Human Rights Clinic (“the Clinic”) at Harvard Law School is pleased to make this submission to the Foreign Affairs Committee of the Icelandic Parliament (Alþingi) regarding Resolution 193/148, “Bann við kjarnorkuvopnum” (“Prohibition of nuclear weapons”).
2. The Clinic participated actively in the negotiations of the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW). It disseminated numerous publications, made statements in the plenary and at side events, and provided legal advice to the International Campaign to Abolish Nuclear Weapons (ICAN), which received the 2017 Nobel Peace Prize. Having worked on disarmament issues since 2005, the Clinic has extensive expertise in the creation, analysis, and interpretation of weapons treaties.
3. The Clinic is currently undertaking a legal research project, focusing on the prohibitions contained in the TPNW and their implications for states that are part of military alliances or whose militaries cooperate with nuclear-armed states. This short submission is based on some of the key findings of the project so far. The full findings will be published later this year.

TPNW’s Consistency with Other Legal Obligations

4. By signing and ratifying the TPNW, Iceland could better meet its obligations under the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Article VI of that treaty requires states parties “to pursue negotiations in good faith on effective measures relating to . . . nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” The TPNW’s prohibitions on nuclear weapons advance Article VI’s goal of nuclear disarmament, and thus joining the TPNW would promote Iceland’s compliance with the NPT.
5. At the same time, Iceland’s membership of the North Atlantic Treaty Organisation (NATO) should not be considered a legal obstacle to ratification of the TPNW. The 1949 North Atlantic Treaty itself does not contain any reference to nuclear weapons or any requirement to participate in nuclear

weapons-related activities.¹ The 2010 NATO Strategic Concept lays out nuclear strategy for the alliance, but represents a political commitment that is not legally binding.²

6. Because the 2010 Strategic Concept treats nuclear weapons as central to NATO's defence policy, some scholars may argue that nuclear weapons-related obligations should be read into the North Atlantic Treaty. That argument falls short in three significant ways. First, as stated above, the North Atlantic Treaty itself contains no requirements related to nuclear weapons. Second, the 2010 Strategic Concept pairs its description of NATO as a "nuclear alliance" with a commitment "to the goal of creating the conditions for a world without nuclear weapons." Third, there is a history of differing practices regarding nuclear weapons among NATO states; some countries, including Iceland, have not permitted nuclear weapons to be deployed on their territory. Joining the TPNW would represent such a differing nuclear practice as well as a step toward realizing NATO's commitment to a nuclear-free world.

Military Operations with State Not Party

7. Disarmament law precedent indicates that states party to the TPNW may continue to participate in joint military operations with a nuclear-armed state, as long as they do not assist their ally with a nuclear weapons-related act prohibited under the treaty. For example, the prohibitions in the 1997 Mine Ban Treaty, which closely resemble those in the TPNW, have not prevented states parties, including many NATO members, from engaging in joint military operations with the United States, a state not party.
8. The TPNW should be understood, however, to prohibit a state party from accepting a nuclear-armed state's promise to use nuclear weapons on its behalf. Such arrangements would violate the object and purpose of the TPNW, which is to eliminate nuclear weapons in order to prevent human suffering. They would also arguably violate Articles 1(d), 1(e), and 1(f) of the treaty, which prohibit: the threat of use of nuclear weapons; assisting, encouraging, or inducing another state to engage in a prohibited act; and seeking and receiving assistance to engage in a prohibited activity.

Iceland's Disarmament Track Record

9. Finally, joining the TPNW would be in keeping with Iceland's generally strong support for disarmament. Iceland is already a state party to the international treaties prohibiting biological and chemical weapons, the other weapons of mass destruction. The TPNW closes a legal gap by ensuring that all weapons of mass destruction are prohibited. Iceland has also joined the more recent bans on antipersonnel landmines and cluster munitions, "humanitarian disarmament" treaties that seek to minimize the unacceptable

¹ The North Atlantic Treaty, Washington D.C. (4 April 1949).

² "Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization," adopted by Heads of State and Government at the NATO Summit in Lisbon, 19-20 November 2010.

civilian harm caused by certain weapons. The latest treaty in this line, the TPNW similarly aims to prevent the “catastrophic humanitarian consequences” of an indiscriminate and inhumane class of weapons. In addition, Iceland has already endorsed a number of international statements highlighting the humanitarian impacts of nuclear weapons and the consequent imperative that these weapons never be used again.³ By signing and ratifying the TPNW, Iceland would build on its strong disarmament track record while taking action to address its expressed concerns about nuclear weapons.

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³ For example: Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, Joint Statement on the Humanitarian Impact of Nuclear Weapons, 24 April 2013; 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Joint Statement on the Humanitarian Consequences of Nuclear Weapons, 2015; UN General Assembly First Committee, 67th Session, Joint Statement on the Humanitarian Dimension of Nuclear Disarmament, 22 October 2012; UN General Assembly First Committee, 68th Session, Joint Statement on the Humanitarian Consequences of Nuclear Weapons, 21 October 2013; UN General Assembly First Committee, 69th Session, Joint Statement on the Humanitarian Consequences of Nuclear Weapons, 20 October 2014.