

70V 1520571

# The Treaty on the Prohibition of Nuclear Weapons

*A Commentary*

STUART CASEY-MASLEN

Dipartimento di Scienze Politiche Biblioteca
Inv. DSP 7268
coll. INTPUB. 341. II. 2315

**OXFORD**  
UNIVERSITY PRESS

# Contents

<i>Table of Cases</i>	xiii
<i>Table of Legislation</i>	xv
<b>Introduction</b>	
<b>The Development of Nuclear Weapons</b>	3
Nuclear Fission	3
The Manhattan Project	6
<b>The Use of Nuclear Weapons</b>	9
The Bombing of Hiroshima	9
The Bombing of Nagasaki	10
<b>Post-Second World War Nuclear Weapons Development</b>	11
The Nuclear-armed States	11
<i>Russia</i>	12
<i>The United States</i>	13
<i>China</i>	14
<i>France</i>	15
<i>The United Kingdom</i>	16
<i>Pakistan</i>	17
<i>India</i>	17
<i>Israel</i>	19
<i>The DPRK</i>	19
Other Nuclear Weapons Development Programmes	21
<i>Sweden</i>	21
<i>South Africa</i>	22
<i>Libya</i>	22
<i>Argentina</i>	23
<i>Brazil</i>	24
<i>Algeria</i>	24
<i>The Socialist Federal Republic of Yugoslavia</i>	25
<i>Iraq</i>	25
<i>Syria</i>	26
<i>The Republic of Korea</i>	26
<i>Japan</i>	26
<i>Iran</i>	27
<i>Saudi Arabia</i>	28
Nuclear Deterrence	29
<b>The International Legal Regime</b>	33
The 1959 Antarctic Treaty	33
The 1963 Partial Test Ban Treaty	34
The 1966 Outer Space Treaty	34
The 1968 Treaty on the Non-Proliferation of Nuclear Weapons	35
The 1971 Seabed Arms Treaty	37
The 1987 Intermediate-Range Nuclear Forces Treaty	37
The START Treaties	39
<i>START I and New START</i>	39
<i>START II</i>	40
<i>START III</i>	40
The 1996 Comprehensive Test-Ban Treaty	41
Regional Nuclear-Weapons-Free Zones	42
<i>Treaty of Tlatelolco</i>	42

<i>Treaty of Rarotonga</i>	43
<i>Treaty of Bangkok</i>	44
<i>Treaty of Pelindaba</i>	44
<i>Treaty of Semipalatinsk</i>	46
<b>The Humanitarian Initiative</b>	46
<b>The Negotiation of the 2017 Treaty</b>	47
The First Session of the Diplomatic Conference	48
The First Draft of the Convention	49
The Second Session of the Diplomatic Conference	50
<i>The Adoption of the Treaty</i>	51
The Reaction to the Adoption of the 2017 Treaty	51
<b>The 2017 Treaty and Customary International Law</b>	53
<i>Usus</i>	54
<i>Opinio Juris</i>	55
Persistent Objector Status	56
The Overlap between Treaty and Custom	57
Concluding Remarks	58
<b>The Title of the Treaty</b>	59
Overview	0.01
Negotiations	0.02
Commentary	0.05
The Definition of a Treaty	0.05
The Importance of the Title	0.06
A Departure from Practice in Other Global Disarmament Treaties	0.08
<b>The Preamble</b>	62
Overview	0.10
Negotiations	0.12
Commentary	0.14
‘The States Parties to this Treaty’	0.14
Preambular Paragraph 1: Contributing to the Purposes and Principles of the United Nations Charter	0.17
Preambular Paragraph 2: The Humanitarian Consequences of Use of Nuclear Weapons and the Need for Their Elimination	0.21
Preambular Paragraph 3: The Risks of the Continued Existence of Nuclear Weapons	0.28
Preambular Paragraph 4: The Catastrophic Consequences of Nuclear Weapons	0.37
Preambular Paragraph 5: The Ethical Imperatives for Nuclear Disarmament	0.52
Preambular Paragraph 6: The Suffering of the Victims of Nuclear Weapon Use and Testing	0.60
Preambular Paragraph 7: The Suffering of Indigenous Peoples from Nuclear Testing	0.67
Preambular Paragraph 8: The Need for States to Comply with International Law	0.73
Preambular Paragraph 9: The Principles and Rules of International Humanitarian Law	0.81
Preambular Paragraph 10: Use of Nuclear Weapons Would Violate International Humanitarian Law	0.106
Preambular Paragraph 11: Use of Nuclear Weapons Would Be Abhorrent to the Principles of Humanity and the Dictates of Public Conscience	0.110
Preambular Paragraph 12: The UN Charter Prohibition of the Threat or Use of Force and the Least Diversion of Resources for Armaments	0.116
Preambular Paragraph 13: Calls by the UN General Assembly for the Elimination of Nuclear Weapons	0.122
Preambular Paragraph 14: Concern about the Slow Pace of Nuclear Disarmament and Waste of Resources on Nuclear Weapons	0.131

Preambular Paragraph 15: The Prohibition of Nuclear Weapons as a Contribution to a World Free of Nuclear Weapons	0.137
Preambular Paragraph 16: Progress towards General and Complete Disarmament	0.141
Preambular Paragraph 17: The Obligation of Nuclear Disarmament	0.143
Preambular Paragraph 18: The NPT as the Cornerstone of the Nuclear Disarmament and Non-Proliferation Regime	0.145
Preambular Paragraph 19: The Vital Importance of the CTBT	0.152
Preambular Paragraph 20: The Contribution of Nuclear-Weapon-Free Zones to Nuclear Disarmament	0.156
Preambular Paragraph 21: The Right to Peaceful Use of Nuclear Energy	0.163
Preambular Paragraph 22: The Participation of Women in Nuclear Disarmament	0.170
Preambular Paragraph 23: Peace and Disarmament Education and Dissemination of the Principles and Norms of the Treaty	0.173
Preambular Paragraph 24: The Role of Public Conscience in Furthering the Principles of Humanity	0.175

## THE ARTICLES OF THE TREATY

<b>Article 1: Prohibitions</b>	131
Overview	1.01
Negotiations	1.02
Commentary	1.08
The Undertaking 'Never Under Any Circumstances'	1.08
The Definition of Nuclear Weapons	1.10
The Definition of Other Nuclear Explosive Devices	1.14
The Prohibition on Development	1.17
The Prohibitions on Production and Manufacture	1.27
The Prohibition on Acquisition	1.30
The Prohibitions on Possession and Stockpiling	1.33
The Prohibitions on Testing	1.36
The Prohibitions on Transferring to Any Recipient	1.43
The Prohibitions on Seeking Transfer or Control	1.52
The Prohibition on Use	1.61
The Prohibition on Threatening to Use	1.76
The Prohibitions on Assisting, Encouraging, or Inducing Prohibited Activities	1.88
The Prohibitions on Seeking or Receiving Assistance in Prohibited Activities	1.119
The Prohibitions on Allowing Stationing, Installation, or Deployment	1.131
Article 1 and the Obligation to Destroy	1.143
 <b>Article 2: Declarations</b>	 174
Overview	2.01
Negotiations	2.02
Commentary	2.08
Paragraph 1	2.10
Paragraph 2	2.15
 <b>Article 3: Safeguards</b>	 180
Overview	3.01
Negotiations	3.02
Scope of the Provision	3.07
Paragraph 1	3.08
Paragraph 2	3.18

<b>Article 4: Towards the Total Elimination of Nuclear Weapons</b>	188
Overview	4.01
Negotiations	4.04
Commentary	4.10
Paragraph 1	4.14
Paragraph 2	4.21
Paragraph 3	4.30
Paragraph 4	4.33
Paragraph 5	4.36
Paragraph 6	4.37
<b>Article 5: National Implementation</b>	202
Overview	5.01
Negotiations	5.02
Commentary	5.05
Paragraph 1	5.05
Paragraph 2	5.07
<b>Article 6: Victim Assistance and Environmental Remediation</b>	207
Overview	6.01
Negotiations	6.02
Commentary	6.08
Paragraph 1	6.08
Paragraph 2	6.29
Paragraph 3	6.33
<b>Article 7: International Cooperation and Assistance</b>	219
Overview	7.01
Negotiations	7.02
Commentary	7.07
Paragraph 1	7.07
Paragraph 2	7.11
Paragraph 3	7.15
Paragraph 4	7.16
Paragraph 5	7.18
Paragraph 6	7.19
<b>Article 8: Meeting of States Parties</b>	225
Overview	8.01
Negotiations	8.03
Commentary	8.05
Paragraph 1	8.05
Paragraph 2	8.08
Paragraph 3	8.10
Paragraph 4	8.12
Paragraph 5	8.13

<b>Article 9: Costs</b>	231
Negotiations	9.01
Commentary	9.03
Paragraph 1	9.03
Paragraph 2	9.04
Paragraph 3	9.05
<b>Article 10: Amendments</b>	234
Negotiations	10.01
Commentary	10.04
Paragraph 1	10.04
Paragraph 2	10.06
Paragraph 3	10.07
<b>Article 11: Dispute Settlement</b>	238
Negotiations	11.01
Commentary	11.03
Paragraph 1	11.04
Paragraph 2	11.07
<b>Article 12: Universality</b>	241
Negotiations	12.01
Commentary	12.02
<b>Article 13: Signature</b>	243
Negotiations	13.01
Commentary	13.03
<b>Article 14: Ratification, Acceptance, Approval, or Accession</b>	246
Negotiations	14.01
Commentary	14.02
<b>Article 15: Entry into Force</b>	248
Negotiations	15.01
Commentary	15.02
<b>Article 16: Reservations</b>	249
Negotiations	16.01
Commentary	16.02
<b>Article 17: Duration and Withdrawal</b>	251
Overview	17.01
Negotiations	17.02
Commentary	17.06

Paragraph 1	17.06
Paragraph 2	17.07
Paragraph 3	17.10
<b>Article 18: Relationship with Other Agreements</b>	<b>255</b>
Overview	18.01
Negotiations	18.03
Commentary	18.08
<b>Article 19: Depositary</b>	<b>259</b>
Negotiations	19.01
Commentary	19.02
<b>Article 20: Authentic Texts</b>	<b>261</b>
Negotiations	20.01
Commentary	20.02
<b>The Date and Place of Adoption of the Treaty</b>	<b>262</b>
Commentary	21.01
<i>Index</i>	<b>263</b>