



# Update on the report of the working group analysing the Treaty on the Prohibition of Nuclear Weapons

31 January 2024

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## 1 Introduction

The Treaty on the Prohibition of Nuclear Weapons (TPNW) was negotiated in 2017, entered into force in 2021 and has so far been ratified by 70 states, all of which are non-nuclear-weapon states. Among the Western countries, Ireland, Austria, New Zealand and Malta have ratified the TPNW. The Treaty comprehensively prohibits nuclear weapons and related actions, i.e. the use, threat of use, manufacture, stockpiling, acquisition, possession, deployment, transfer and testing of nuclear weapons. It also prohibits the provision of support for these banned activities. Its supporters want to use it to advance disarmament and strengthen the taboo on the use of nuclear weapons that has existed since 1945. Opponents consider the Treaty to be purely symbolic, exerting pressure to provide justification and disarm primarily on Western, democratic nuclear-weapon states.

In 2018 and 2019, based on the report of an interdepartmental working group (IDWG) headed by the FDFA, the Federal Council decided not to join the TPNW for the time being. The IDWG concluded that the Treaty's objectives were in principle in keeping with Swiss disarmament policy. It also concluded that humanitarian concerns, international law and peace policy tended to speak in favour of Switzerland joining the TPNW. However, the IDWG also identified some risks of an accession. The IDWG mentioned that aside from stigmatising nuclear-weapon states, joining the TPNW would only have a limited effect on disarmament due to the absence of these states and their allies. It also referred to Switzerland's security policy interests. At the time, the IDWG concluded that the reasons against Switzerland acceding to the Treaty outweighed the potential opportunities. It recommended that Switzerland observe the TPNW process and reassess the issue of accession at a later stage.

During the same period, the majority of Parliament spoke out in favour of joining the TPNW by adopting Carlo Sommaruga's motion 17.4241, which called on the Federal Council to sign and ratify the TPNW. In view of Russia's aggression against Ukraine, in 2022 Parliament adopted Josef Dittli's postulate 22.3800. This postulate instructed the Federal Council to report on the consequences for Swiss foreign and security policy to be expected if Switzerland joins the nuclear weapons ban treaty, and on that basis to determine which course of action would best safeguard the country's interests.

The 2018 decision signalled scepticism as to the effectiveness of the Treaty as a disarmament instrument. This stance should not, however, be interpreted as a sign of opposition to nuclear disarmament. Switzerland has consistently pursued its long-standing commitment in this area. Its multilateral engagement focuses in particular on the implementation of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which 191 states have ratified – including the five NPT-recognised nuclear-weapon states. Switzerland has built bridges between states in different regions of the world, including between those with nuclear weapons and those without. It also puts forward practical disarmament proposals as well as concrete proposals to reduce the risks posed by nuclear weapons. It always stresses these weapons' catastrophic humanitarian impact and underscored that it is almost impossible to envisage nuclear weapons ever being used in conformity with international law, in particular international humanitarian law. As an observer at the First TPNW Meeting of States parties in 2022, Switzerland stated that it was ready to contribute to a constructive relationship between the NPT and the TPNW.<sup>1</sup>

This report builds on the original report of 2018,<sup>2</sup> revisiting its conclusions in view of the current situation. Unless otherwise indicated, the 2018 report is still relevant. Covering security, arms control and foreign policy, international law and humanitarian as well as economic concerns, this new report incorporates input from a good dozen national and international experts outside the Federal Administration – including some who support the TPNW and others who do not. Having already provided written assessments for the 2018 report, these experts were asked to assess how relevant it is today.

## **2 Background**

The background outlined in the 2018 report remains largely relevant for this reassessment. The commitment to achieving a world without nuclear weapons remains fundamentally unchanged. The Arms Control and Disarmament Strategy 2022–25 adopted by the Federal Council at the start of 2022 designates nuclear weapons as the first of five areas of action and sets ambitious goals. The prime importance of the NPT and the implementation of its three pillars – disarmament, non-proliferation and the peaceful use of nuclear energy – are top priorities for Swiss policy in this area.

The international environment, on the other hand, has changed since 2018. Switzerland now finds itself in a challenging global context, in particular due to the war in Ukraine. This context is marked by a surge in power politics and numerous geopolitical fault lines. The great powers are vying for influence, and a profound crisis of confidence, while eroding the effectiveness of international organisations, is coupled with a trend towards rearmament. With globalisation continuing to lose momentum, fragmentation and regionalisation are taking centre stage. As authoritarian states continue to bolster their political and economic influence, they increasingly challenge the model of liberal democracy. The existing rule-based order and compliance with international law are under great pressure. Russia's military aggression against Ukraine represents a juncture in the history of Europe. Switzerland's European neighbourhood has once again become a geopolitical flashpoint.

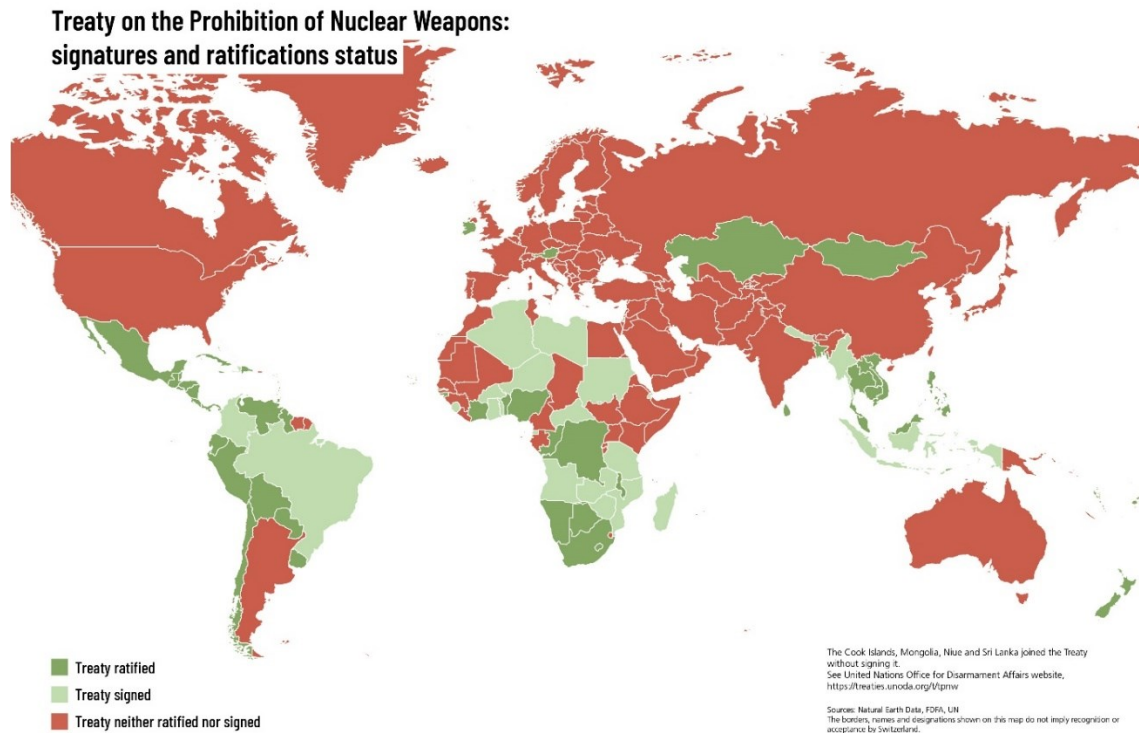
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<sup>1</sup> Since the finalization of this report, Switzerland has also participated in the second meeting of states parties in 2023 as an observer.

<sup>2</sup> See “Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons” of 30.06.2018.

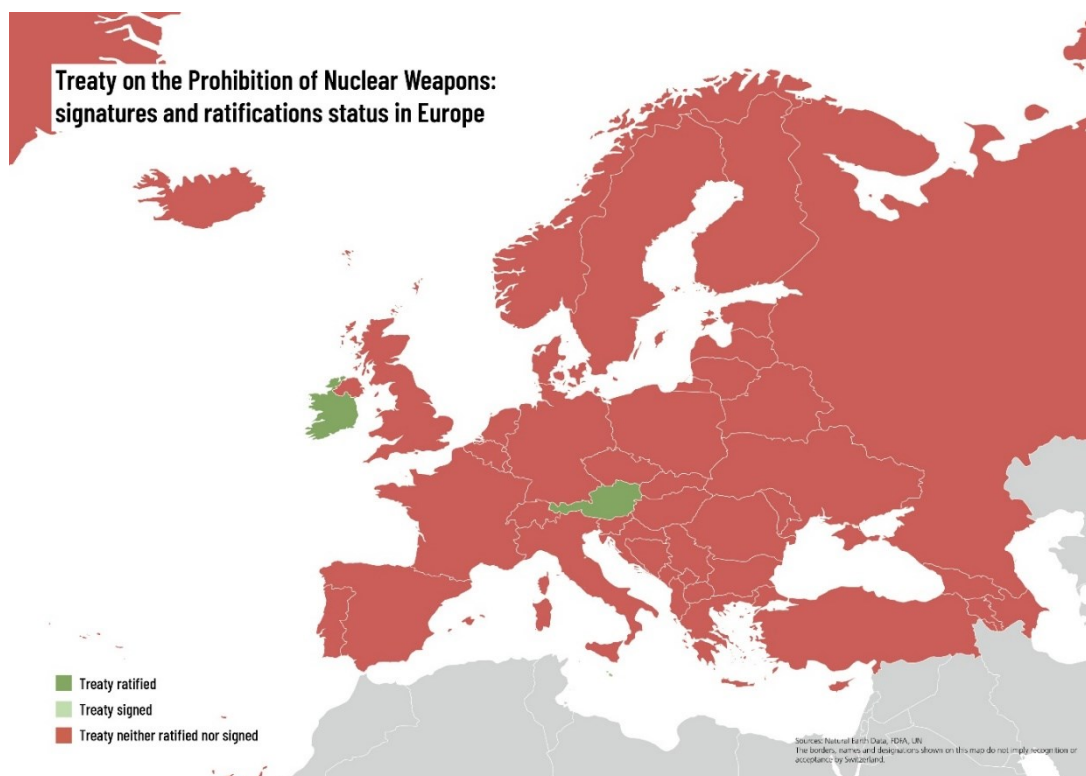
This environment has seen nuclear weapons returning to the fore of global politics, magnifying the 2018 report's appraisal that Switzerland's long-standing goal of a world without nuclear weapons is growing ever more elusive. Major arms control treaties have been eroded, new agreements are unlikely at this time, and nuclear weapons arsenals are being modernised or further developed. The prospects for reductions in nuclear weapons stockpiles or more far-reaching nuclear disarmament efforts are poor in view of the longer-term security policy confrontation between Western states and Russia. Even just preventing the proliferation of these weapons remains an enormous challenge. North Korea has further developed its arsenal. There are unresolved issues concerning Iran's nuclear programme. Other states may opt to develop a nuclear capability.

Since February 2022, Russia has, on multiple occasions, threatened to use nuclear weapons and announced the stationing of nuclear weapons in Belarus. This has reminded the general public that thousands of nuclear weapons still exist and that an intentional or unintentional nuclear escalation would have catastrophic humanitarian consequences affecting Switzerland too, both directly and indirectly. The fact that nuclear weapons have not been used to date can be seen as supporting the argument that deterrence has been working. Many states continue to believe that nuclear weapons – as a last resort – have an indispensable stabilising effect. This view explains why these states are investing in modernising their arsenals. At the same time, heightened nuclear risks have moved to the forefront of international security concerns, particularly as a result of Russian threats and statements. Moscow's behaviour runs contrary to the affirmation of the five nuclear powers that a nuclear war cannot be won and must therefore never be waged. This shows that the taboo on using nuclear weapons, which has existed since 1945, needs to be strengthened. One source of risk is unintended escalation if one nuclear power assesses a situation involving another incorrectly. Another fear is that repeated threats to use nuclear weapons could make nuclear deterrence less credible.



*Fig. 1 – Treaty on the Prohibition of Nuclear Weapons: signatures and ratifications status (source: UN; graphic by FDFA)*

Since the 2018 report, the TPNW was ratified by 50 states and entered into force in January 2021. An overview shows that among the current 70 states parties, the countries of the Global South are very strongly represented. In contrast, support in Europe is significantly weaker. In addition, the positions of Europe's neutral and non-aligned states differ.



*Fig. 2 – Treaty on the Prohibition of Nuclear Weapons: signatures and ratifications status in Europe (source: UN; graphic by FDFa)*

Austria and Ireland see the TPNW as an opportunity for disarmament and have ratified it. They are among the most active states in the TPNW and, like many other states, would like to see Switzerland as a partner. So, Austria hosted the First Meeting of States Parties to the TPNW in 2022, shaping the implementation process through the Meeting's Vienna Action Plan. Ireland played a key role in the negotiations, including chairing the TPNW–NPT complementarity sub-committee. Both countries are members of NATO's Partnership for Peace (PfP) programme and the Euro-Atlantic Partnership Council. Although cross-comparisons are only possible to a limited extent, as not all states aim for the same level of cooperation between the partners, it can be concluded from bilateral discussions that their TPNW position has not had a negative impact on cooperation with NATO.

Sweden, like Switzerland, was actively involved in the TPNW negotiations in 2017, but decided in 2019, with reference to an expert report, not to join the Treaty for the time being. Stockholm saw TPNW accession as incompatible with maintaining its very close relations with Euro-Atlantic partners. Many Swedish concerns about the TPNW were very similar to the Swiss considerations of 2018. One key assessment was that Sweden can better promote disarmament as a TPNW observer and through participation in NPT-related initiatives than as a state party to the TPNW.

Finland, unlike Sweden and Switzerland, did not participate in the TPNW negotiations. It never considered joining the Treaty but, like Switzerland and Sweden, it did participate in the First

Meeting of States parties as an observer.<sup>3</sup> For Finland, given its history and related security policy concerns, the core argument against joining the Treaty seems to have been the need to keep open the option of joining NATO. Now, with Finland's accession and Sweden's intention to join NATO, the TPNW issue is politically off the table for both countries.

A large majority of partners in Western nuclear-weapon states and transatlantic as well as security policy representatives continue to maintain that the NPT and the TPNW are incompatible and that the TPNW is ineffective.

### **3 Assessment of the Treaty and its effects**

The TPNW and related Swiss values and interests can be viewed from various perspectives. Based on the structure of the 2018 report, this report assesses the following dimensions:

1. Security policy
2. Foreign policy
3. International law and humanitarian concerns
4. Arms control, disarmament and non-proliferation
5. Economy

#### **3.1 Security policy**

Security policy considerations are particularly significant due to the aggravated security situation resulting from the Ukraine war. For some time now, the global security architecture has been under pressure due to increasing rivalry between the major powers and due to emerging regional powers. On top of this, with Russia's military aggression against Ukraine, Europe – including Switzerland – is at a major juncture in its history. Accordingly, security considerations with regard to TPNW accession have become more pronounced than they were when the IDWG issued its 2018 report.

Indeed, Russia's military aggression against Ukraine has shown how quickly the security environment can change. The war destroyed what was left of the European peace and cooperation architecture that involved Russia. The attack by a nuclear-weapon state and permanent member of the UN Security Council on a non-nuclear-weapon state that had been promised independence, sovereignty and respect for its borders at the end of the Cold War in exchange for giving up its post-Soviet nuclear weapons arsenal raises fundamental questions.

NATO's 2022 Strategic Concept designates Russia as the main threat to European security. Russia's use of military force in Ukraine brings the Euro-Atlantic community together in the conviction that a united position and credible, joint deterrence are needed to keep conflicts from escalating.

In a permanently worsened security policy environment, security and defence policy cooperation in Europe is being stepped up. The accession of Finland and upcoming one of Sweden will strengthen NATO. For Switzerland, this means the loss of opportunities for close

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<sup>3</sup> Both Finland and Sweden did not participate in the second meeting of State parties, which took place in November 2023, i.e. after the finalization of this report.

coordination with two important Western European partner states within the framework of the Partnership for Peace. Switzerland needs to maintain favourable conditions for deepening cooperation. But this is only possible if Switzerland can deliver in its security partnerships, including through substantial contributions to the security of its partners. With this in mind, the Federal Council adopted the report "Defence Capability and Cooperation" in January 2024, according to which Switzerland should expand interoperability - without entering into obligations, dependencies or constraints that are incompatible with its neutrality - and make greater use of the Partnership for Peace as the existing institutional framework for cooperation with NATO, as well in the area of defence.

Ratification of the TPNW would likely complicate Switzerland's position in security partnerships, especially vis-à-vis NATO, which will continue to affirm its role as a nuclear alliance for the foreseeable future. Joining the TPNW would send politically mixed signals to key partners such as certain neighbouring countries or members of NATO. This has been repeatedly and strongly signalled in international contacts. Accession would probably impede Switzerland's goal of intensifying or expanding its international bilateral and multilateral cooperation.

The war in Ukraine has only reinforced the argument made in 2018 that the TPNW is largely ignored by actors that are not liberal democracies, i.e. that it can hardly exert any influence on them. As a result, democratic states would be under greater pressure from the public to justify the existence of their stockpiles and to reduce them, whereas autocratic states would not.

The discussions within the Federal Administration as well as contributions from the external experts underscore the need to pay more attention to security policy issues in the current environment than was paid in the 2018 report. In addition, in mid-2022, Parliament adopted Dittli Postulate 22.3800 concerning the effects on Swiss foreign and security policy to be expected if Switzerland joins the TPNW. The postulate explicitly calls on the Federal Council to submit a report focusing on foreign and security policy.

**Security policy considerations still speak against joining the TPNW. The Ukraine war has significantly reinforced this assessment. Switzerland joining the Treaty would not be consistent with the political thrust of the supplementary report to the 2021 report on security policy. Such a move would have a politically detrimental effect on the goal of strengthening security and defence policy cooperation with European and Euro-Atlantic actors.**

### **3.2 Foreign policy**

Taking a long-term perspective, we can see that the rule of law, and with it democracy and human rights, have been on the defensive worldwide in recent years and decades. Respect for international law is under pressure. The international order is weakening. Switzerland is also affected by these developments and must take a position in view of the emergence of competing sets of norms. Numerous foreign policy strategies, including the Arms Control and Disarmament Strategy 2022–25, are based on these observations.

The weakening of the international order is particularly evidenced by the fact that key arms control treaties are being flouted. This development concerns both multilateral processes and bilateral treaties. In view of US–Russian relations, the last remaining bilateral arms control

treaty New START is expected to expire in February 2026.<sup>4</sup> An arms race among the major powers is already taking shape, and showing signs of regional ripple effects. When looking at international governance more broadly, one first observes that the UN Security Council is increasingly deadlocked – especially on non-proliferation issues. Second, multilateral processes are constrained in their decisional capacity due to the rule of consensus, which is widespread in the area of security policy and especially arms control. Third, due to divergences between states, it is increasingly rare to see an effective multilateral configuration form and reach agreements on new norms that are supported by the entire community of states.

The TPNW can on the one hand be seen as putting up symbolic and political resistance to these alarming trends. Its basic thrust is to promote the strict observance and further development of international law, particularly international humanitarian law, human security and the idea of outlawing the last weapons of mass destruction not yet explicitly banned. In this sense, the Treaty does indeed reflect Switzerland's intention to actively help shape effective and values-based multilateralism with the aim of furthering domestic security and prosperity.

On the other hand, Switzerland is facing a situation that is highly volatile in terms of foreign policy and requires more than symbolic responses. We therefore have to take into account the fact that although the TPNW will hardly make nuclear disarmament more difficult, it will not advance it either. Pursuing Swiss foreign policy interests also means taking into account the fact that it is the Western states and Switzerland's most important partners – namely the US, UK and France nuclear powers and the EU – that are helping Ukraine stand up to Russia's aggression, and that this help benefits Switzerland's security as well.

#### Preservation of Switzerland's role as a bridge-builder

Switzerland's role and credibility as a bridge-builder depend to a large extent on a values-based, objective and independent foreign policy. No matter the circumstances, Switzerland must preserve its credibility and role as a mediator in disarmament and arms control efforts, including humanitarian initiatives.

Switzerland performs best in this role when it succeeds in taking pragmatic action, bringing realistic proposals to the table and serving as an equalising force among diverging interests. One of Switzerland's core interests here is to be able to mediate between nuclear and non-nuclear-weapon states. For this to work, both sides must perceive Switzerland as credible and reliable.

#### Continuity of Swiss disarmament policy

Working towards a world without weapons of mass destruction and strengthening multilateral norms and international law in this regard are and will remain goals of Swiss foreign policy. In these areas, Switzerland has supported innovative ideas. In general, it helps reduce the impact of armed conflict. Switzerland also advocates strict compliance with international humanitarian law (IHL) in order to minimise the impact of weapons, on civilians and civilian objects in particular. This commitment not only upholds Switzerland's humanitarian tradition. It is also grounded in security policy considerations, as measures in the area of arms control and disarmament contribute to stability and certainty. Switzerland actively and fully supports the

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<sup>4</sup> Since this report was finalized, Russia withdrew its ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) in November 2023.

corresponding treaties, for example with regard to the prohibition of chemical and biological weapons.

In this context, Switzerland's disarmament policy is often marked by pragmatic rather than symbolic moves, which speaks against joining the TPNW, whose effect is primarily symbolic. Switzerland pursues an inclusive policy of dialogue, according to which disarmament should take place *with* and not *against* nuclear weapon states, and has traditionally been wary of efforts to stigmatise states. At present, ensuring the continuity of cooperation with its closest partners is important.

### Neutrality issues

According to the report adopted on 26 October 2022 in response to the postulate 22.3385 put forward by the Foreign Affairs Committee of the Council of States “Clarity and guidance on neutrality policy”, Switzerland's practice in this area, last set out in 1993, guarantees the country with enough scope to use neutrality as a tool of Swiss foreign and security policy in today's international context. The existing framework – including the law of neutrality – allows for an expansion of security policy cooperation, as also envisaged in the supplementary report to the 2021 report on security policy. The neutrality-related assessments made in 2018 regarding the TPNW therefore remain valid. Switzerland may not join any defensive alliance. However, it may defend itself together with other states or alliances (including NATO) if it is attacked. Existing forms of cooperation with NATO, such as the Partnership for Peace, are permissible within the framework of the law of neutrality. Whether or not to abandon neutrality after having had to defend itself would constitute a separate political decision for Switzerland. Neutrality thus speaks neither for nor against joining the TPNW.

**In terms of foreign policy, there are reasons both for and against joining the TPNW. On the one hand, the TPNW corresponds to Switzerland's efforts to strengthen the international order and, as a humanitarian country, to advocate for values-based multilateralism and peace policy. On the other hand, especially in light of Russia's military aggression in Ukraine, TPNW accession could affect other bilateral and multilateral foreign policy interests and Switzerland's traditional role as a bridge-builder. In contrast, neutrality speaks neither for nor against joining the TPNW. Taken as a whole, Switzerland's foreign policy interests speak against acceding to the TPNW.**

## **3.3 International law and humanitarian concerns**

### International law

The 2018 report's discussion of the international law dimension remains valid, topical and accurate regarding its content. Switzerland has always taken the position that it is almost impossible to envisage nuclear weapons ever being used in conformity with the relevant norms of international law, in particular international humanitarian law. Looking at scenarios in which nuclear weapons would be used in today's context, any cases of lawful use seem extremely doubtful. First, the conditions of the right of self-defence would have to be observed, in particular the UN Charter's Article 51 requirement that any reaction to an armed attack must be necessary and proportionate. Furthermore, the rules and principles of international humanitarian law would have to be respected in the given armed conflict. IHL requires in particular that any use of weapons target exclusively combatants or military targets, and that civilians and civilian objects be spared. The parties to the conflict are obliged to take precautions to minimise the consequences of an attack for the civilian population. Any



collateral damage caused must be proportionate. The use of methods or means of warfare that cause extensive, prolonged and severe damage to the natural environment is inadmissible, as is the use of weapons that cause unnecessary suffering. Finally, any transgression of the nuclear taboo would entail highly problematic risks of the conflict escalating.

If Switzerland were to join the TPNW, it would be making an unambiguous statement once again that it rejects the use of nuclear weapons and any related acts. All acts involving nuclear weapons – including threats – would then be explicitly prohibited, without exception, for Switzerland. In the current context, backing such a norm would bolster Switzerland's humanitarian policy and its long-standing commitment to seeing a series of treaties concluded that would prohibit the use of certain weapons because of their devastating effects. It would be a clear commitment to the principle of international humanitarian law that in an armed conflict, the parties involved do not have an unfettered right to choose the methods and means of warfare. Moreover, one could argue that it is in Switzerland's interest to strengthen the international legal norm against nuclear weapons.

The TPNW creates neither obligations nor rights for states that are not party to it and do not agree to any of its provisions. Given the continuing opposition of key countries, especially the nuclear-weapon states and their allies, a universal and comprehensive ban on nuclear weapons under customary law is likely to remain out of reach for the foreseeable future. The legal situation, especially as regards the use of nuclear weapons, will remain internationally controversial for non-TPNW states, irrespective of whether Switzerland joins the Treaty.

#### Humanitarian concerns and peace policy

The points made in the 2018 report regarding peace policy and humanitarian concerns have also remained largely relevant. Switzerland's humanitarian tradition and its commitment to promoting peace as well as human rights and international humanitarian law tend to speak in favour of Switzerland joining the TPNW.

Since 2018, states and think tanks have advanced research on nuclear risks and in particular on the catastrophic humanitarian consequences of nuclear weapons. These stakeholders have contributed additional relevant, evidence-grounded findings in areas such as the climate, food security and global supply chains. Consistent with Switzerland's position that the nuclear issue should be framed in terms of the catastrophic humanitarian impact of these weapons, the 2018 report should be complemented with the assertion that humanitarian response capabilities at both national and international levels would be grossly inadequate in the event of nuclear weapons use, unlike in situations involving conventional weapons.

Furthermore, other actors in peace policy circles expect Switzerland – as the depository state of the Geneva Conventions – to join the Treaty, given its humanitarian tradition and its values. In the current global political context, it is important for Switzerland to cultivate its humanitarian identity and to help further develop such values and norms. In this respect, accession would bolster Switzerland's humanitarian and peace policy engagement, an area where the country has a long-standing leadership policy. Switzerland has traditionally opposed the use of nuclear weapons. Still, an accession to the TPNW would help strengthen the international nuclear taboo and send a symbolic signal of commitment to the universalisation of legal instruments designed to prevent humanitarian suffering and catastrophes.

**Given that the use of nuclear weapons is practically impossible to reconcile with international law, joining the TPNW would be consistent with Switzerland's historical stance against the utilisation of highly destructive weapons. In joining the TPNW, all acts involving nuclear weapons would be explicitly prohibited, without exception, for**

**Switzerland. This would send a powerful message, particularly at a time when international norms are under pressure. In addition, backing a strong norm against nuclear weapons would bolster Switzerland's humanitarian policy and its long-standing commitment to promoting peace and human rights. International legal norms and humanitarian considerations thus speak in favour of Switzerland joining the TPNW. Still, the normative and humanitarian message this would send would have to be tempered by the fact that the TPNW is only binding on those states that have acceded to it.**

### **3.4 Arms control, disarmament and non-proliferation**

For some time now, arms control has been in a precarious situation. The current international situation, with new blocs forming and the scope for bilateral and multilateral action narrowing, is making an already complex initial situation even more challenging. These circumstances should also be taken into account when examining the complexity of the TPNW's role.

#### Interplay with the existing non-proliferation and disarmament regime

In 2018, the IDWG identified numerous unresolved points regarding the interplay between the TPNW and the NPT, or more broadly, the existing non-proliferation and disarmament regime – especially as, in Switzerland's view, the TPNW-NPT relationship could only be partially clarified during the negotiations. The IDWG considers it still premature to try to draw definitive conclusions about the TPNW's position in the long term and its effects in the multilateral system, given that the relevant practices need time to take root. That said, the IDWG has not seen any signs to date of the NPT being called into question as cornerstone of the disarmament and non-proliferation architecture, or of it being undercut. This is evidenced by the final declaration of the First Meeting of the TPNW States Parties and the constructive role the TPNW states played at the NPT Review Conference in summer 2022. Speculations about TPNW states withdrawing from the NPT have not materialised. The practice of TPNW states since 2018 has largely resolved these open points.

Moreover, it is encouraging to note that the TPNW states, like Switzerland, stress the NPT's role as the core cornerstone of the world's disarmament and non-proliferation architecture and describe themselves as fully bound to the NPT. The complementarity between the old and the new treaty and the synergies that Switzerland hoped for are explicit goals of the TPNW process. Certain non-nuclear-weapon states see their advocacy of the comprehensive legal ban as a contribution to the implementation of the NPT disarmament obligation. Indeed, the key TPNW states include some of the most active non-nuclear-weapon NPT states, such as Ireland and Austria. As Switzerland expected, the TPNW was not a stumbling block at the NPT Review Conference. There would have been a consensus for recognising, in the Conference's outcome document, the TPNW as a treaty that has entered into force. Mentions of activities stemming from the TPNW in the field of victim assistance or environmental remediation, areas where Switzerland intends to work regardless of its TPNW status, would also have been included – for the first time – in an NPT outcome document.

#### Advancement of disarmament

The TPNW has also been unable to advance nuclear disarmament in recent years. Those who had hoped that non-TPNW-actors holding nuclear weapons would allow decisions on arsenals or strategies to be dictated by a treaty they consider neither legitimate nor helpful were disillusioned. Those who had expected that the TPNW would lend concrete impetus to the stalled disarmament efforts were also disappointed. For as long as no states with nuclear weapons join the TPNW, it will have no direct effect. An ineffective TPNW would then become part of a series of multilateral initiatives which, in reality, gain only limited influence. Still, the TPNW continues to bear the symbolic value that the 2018-reporting IDWG recognised as

making a powerful statement against all proliferation and rearmament plans and against the strengthening of the role of nuclear weapons.

At the same time, nuclear disarmament as a whole has been faltering for years. This is illustrated by the mixed results of the NPT's disarmament pillar over decades, the unsatisfactory implementation of the NPT's 2010 Action Plan, the non-entry into force of the Comprehensive Nuclear-Test-Ban Treaty negotiated back in 1995 and the decades-long deadlock in negotiations for a fissile material cut-off treaty. Notwithstanding NPT commitments or TPNW impetus, most actors with nuclear weapons have - in the political context of recent years - not disarmed, but rather upgraded and modernised their arsenals with an eye to the coming decades. Disarmament norms unfold their effects over years or decades; the TPNW has not yet had any disarmament effects since it came into force in 2021.

### Non-proliferation considerations

As the 2018 report noted, the TPNW negotiations missed out on the opportunity to incorporate into the new treaty-to-be the most rigorous non-proliferation verification standards (i.e. those of the IAEA's Additional Protocol). This Protocol was not discussed at the First Meeting of States either. It would have allowed the states parties to address a common criticism. If it joined the TPNW, Switzerland would be able to advocate for stricter verification standards. Still, the chances of success here seem limited, in particular due to strong resistance from actors including NPT states.

Nevertheless, the TPNW does serve to strengthen and build on existing non-proliferation obligations. In the context of discussions about nuclear sharing and certain technical agreements, it is significant that TPNW states pledge to refrain from all activities related to nuclear weapons, thereby going beyond NPT obligations. Another noteworthy positive point is that the TPNW requires its states parties to maintain their IAEA safeguards at least at the level they were at the time of ratification. In addition, TPNW states are more tightly tied to their IAEA safeguards agreements than NPT states are. The TPNW also complements the Comprehensive Test Ban Treaty (CTBT) and the regional nuclear-weapon-free zones, which are also important non-proliferation instruments.

**Given the absence of nuclear-weapon states and their allies, the TPNW is not an instrument that can directly advance nuclear disarmament in the foreseeable future. Possible indirect positive effects – the TPNW prohibition norm bolstering non-proliferation and the TPNW having a symbolic impact – would be welcome in view of the difficult disarmament situation, but, realistically assessed, such effects currently appear to be limited. In particular, the hoped-for effect of negotiating more far-reaching agreements based on the TPNW is unlikely to materialise. This lends greater credence to the view that Switzerland can continue to play an active role in arms control even and especially as a non-member of the TPNW. Indeed, as an observer of the TPNW, Switzerland was able to express its support for establishing a constructive relationship between the NPT and the TPNW and for leveraging certain synergies.**

## 3.5 Economy

### The support ban and its scope

As Article 1 para. 1 let. e of the TPNW forbids support for any activities prohibited by the Treaty, it is necessary to analyse the economic impact of Switzerland's possible accession to the TPNW.

The challenge here is that letter e is formulated very broadly. The state parties undertake never to "assist, encourage or induce, *in any way*, anyone to engage in any

activity prohibited to a State Party under this Treaty [emphasis added]." As this prohibition's scope is unclear, its practical implementation depends on how each state party interprets it and on any future decisions of the meetings of states parties. That said, treaties with comparable prohibitions on assistance, e.g. the Chemical Weapons Convention (CWC), can give an idea of how this prohibition could be interpreted and applied. Given that little time has passed since the TPNW entered into force and that it is difficult to compare Switzerland with other states, reliable information on this point is scarce.

Although there are no signs at present that TPNW states are interpreting the prohibition broadly, there is no guarantee that they will never do so. Still, certain statements, of which some have even been made by TPNW-friendly actors, point to a restrictive interpretation. They also emphasise the necessity of a causal link between a possible act of support and a prohibited activity. This act must have made a substantial contribution and been conducted with the state's knowledge of, and possibly even with the intention to support, a prohibited activity.

In light of the above, the three aspects of the support ban that are most likely to have an effect on Switzerland's economy will be examined below.

### Transfers of goods

Article 7 of the War Material Act (WMA) contains a comprehensive prohibition of nuclear weapons-related acts, including of any activities inciting or assisting anyone to carry out such acts. Article 7 let. a specifies that importing, exporting, and carrying in transit nuclear weapons are prohibited. In addition, the goods control legislation prohibits the export of controlled goods if, among other things, it can be presumed that they are intended for the development, manufacture, use, transfer or deployment of nuclear weapons or their delivery systems.

However, the Goods Control Act (GCA) exempts from this prohibition deliveries of such goods to NPT-recognised nuclear-weapon states. In the current legal situation, such deliveries to these states are in principle not prohibited, i.e. they are generally eligible for authorisation. This is because the NPT does not ban nuclear weapons for these states under international law. Any additional relevant legal provisions, in particular those of the Embargo Act, constitute reservations to the above.

Regarding transfers of goods, Swiss legislation is thus largely compatible with the anticipated scope of the TPNW support ban. That said, if Switzerland were to join the TPNW, acts of support involving NPT-recognised nuclear-weapon states would likely have to be treated the same as those involving non-nuclear-weapon states. As far as we know at present, the macroeconomic consequences for Switzerland would probably be quite limited. Still, some Swiss companies would possibly no longer be able to fulfil potentially important individual orders for NPT nuclear-weapon states. This issue would arise for orders with a technical connection to nuclear weapons or their delivery systems.

While the extent to which GCA-controlled goods have a technical connection to nuclear weapons or delivery systems and how direct this connection is must be assessed in each individual case, the legality of exports such as components or machines for enriching uranium or constructing nuclear weapon-equipped submarines would be called into question. Conversely, exporting goods not intended exclusively for nuclear weapons use, such as electronics or engine technology for nuclear-*capable* F-35 jets or B-52 bombers, would in principle still be permissible, as they cannot be considered to have a significant connection to a nuclear weapons programme.

## Financing

Current legislation classifies as acts of support the financing of the development, manufacture or acquisition of nuclear weapons and prohibits (in articles 8b and 8c of the WMA) such support accordingly, unless the act in question complies with the provisions of the NPT.

A Swiss accession to the TPNW would thus have the effect of completely prohibiting the financing of nuclear weapons programmes abroad, regardless of whether they are nuclear-weapon states or non-nuclear-weapon states under the NPT. The macroeconomic impact of this broadening of the financing ban would probably be low.

## Providing services

Maintenance, repair, consultancy, training or other services abroad in connection with nuclear weapons could also constitute acts of support under the TPNW. Currently, such acts are in principle prohibited by Article 7 of the WMA unless they comply with the provisions of the NPT.

If Switzerland were to join the TPNW, it would no longer be possible to make this distinction favouring the NPT nuclear-weapon states with regard to services. That said, it can be assumed that the economic impact of this would be negligible.

**While the scope of the TPNW's support ban remains unclear, there is currently no evidence that the states parties will be interpreting it broadly. Joining the TPNW would not require Switzerland to adapt its existing legal bases. It would in practice only have an impact on certain economic activities favouring the NPT nuclear-weapon states. The macroeconomic consequences would likely be minor.**

## **4 Conclusions**

The working group finds that humanitarian concerns, international law and peace policy in themselves speak more in favour of Switzerland joining the TPNW. As the TPNW appears to have little impact on the Swiss economy based on current knowledge, little would speak for or against accession from an economic perspective. It seems that the fear that the TPNW would undermine the NPT has not been borne out. At the same time, it is clear that the TPNW will hardly advance nuclear disarmament and that its function is primarily symbolic. Switzerland's security policy interests, on the other hand, must be weighted more heavily. In the new situation created by the Ukraine war, the security and foreign policy arguments against joining the TPNW predominate. A Swiss accession could cause incomprehension among our most important partner states, and even create the impression that we are no longer standing in solidarity with them. Such a perception would be strengthened by the Swiss position on the war in Ukraine, given that this position is grounded in neutrality and applicable law. Although a TPNW accession would not hinder Switzerland's cooperation with (NATO) partners in legal terms, it would make it more difficult to step up such cooperation in the future. This is not in Switzerland's interests.

**On the basis of the considerations above, the IDWG has drawn the conclusion that joining the TPNW would be disadvantageous for foreign and security policy. Accordingly, the IDWG finds the arguments against a Swiss accession stronger than those for it. If necessary, a new assessment of the situation could be made in future, once today's situation has changed considerably.**

**The IDWG notes that irrespective of whether it joins the TPNW, Switzerland will be able to underscore and pursue its commitment to non-proliferation and nuclear disarmament in line with the Arms Control and Disarmament Strategy 2022–25. This includes Switzerland's ongoing work to reduce nuclear weapons-related risks, its participation**

**in the NPT processes and TPNW meetings of states parties and, together with other states, its promotion of complementarity and synergies between the NPT and the TPNW, namely with tangible contributions in assisting victims, rehabilitating the environment and providing international aid.**