

Using Nuclear Weapons

This treaty will have a significant impact on the strategic thinking going on inside the nuclear armed establishments, because it's one thing to have a taboo, and another to have a law. This piece looks at the questions of using nuclear weapons, and what the prohibition on use might mean for countries that don't have their own nuclear weapons, but instead plan on other countries causing massive nuclear devastation for them.

UN Charter

A lot has been written and discussed when it comes to the use of nuclear weapons, from the UN Charter to the International Court of Justice. Notably, Article II (4) of the UN Charter requires UN members to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” The construction and design of nuclear weapons makes any use a violation of this core principle of international law. There is a need however, to make this explicit as has been done with other weapon prohibitions.

International Court of Justice

This is not the place to repeat what has been said about the International Court of Justice and its 1996 decision on the use and threat of use of nuclear weapons. Rather, it is good to recognise that since that decision both anti-personnel landmines and cluster munitions have been prohibited due to their indiscriminate effects. The ICRC wrote a [great piece](#) about this on the 20th anniversary of the ICJ decision. In that piece, Lou Maresca wrote:

“Of course, customary law evolves and today there is a clearer picture of the full range of customary rules that would apply to any use of nuclear weapons. Thanks in large part to the ICRC’s study on Customary International Humanitarian Law, and the practice and opinio juris found therein, customary rules such as the rule of proportionality, the prohibition of indiscriminate attacks and the rule on feasible precautions are clearly situated as legal obligations relevant for assessing the use of nuclear weapons under IHL, even though they were not specifically mentioned or applied in the ICJ’s opinion. These rules would surely need to be part of any credible legal assessment today.”¹⁷

International Law and International Humanitarian Law are living embodiments of some of the hopes and ideals for humanity and its progress.

What does it mean for NATO?

The political impact on NATO’s non nuclear armed members would require a shift in current NATO nuclear policy. NATO’s [2010 Strategic Concept](#) says “The circumstances in which any use of nuclear weapons might have to be contemplated are extremely remote.”², which was reiterated at the most recent summit in Wales. NATO would need to

¹ <http://blogs.icrc.org/law-and-policy/2016/07/08/nuclear-weapons-20-years-icj-opinion/>
² Active Engagement, Modern Defence – Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization (2010), paragraph

¹⁷: http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_publications/20120214_strategic-concept-2010-eng.pdf

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change this political statement at an upcoming summit to rule out the use of nuclear weapons completely, under any circumstances. In addition, NATO would require a reassessment of its deterrence mix, and the removal of nuclear weapons from the recipe. Given NATO's overwhelming conventional military and technological superiority, as well as the types of threats envisaged in the coming decades, removing the nuclear weapons option offers NATO an opportunity to reallocate resources to further strengthen the Alliance as a whole while protecting citizens across the North Atlantic.

What does it mean for other nuclear weapon users?

The non-nuclear armed CSTO States, Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Tajikistan would also need to make an explicit statement rejecting the nuclear umbrella offer by the Russian Federation. This could be done either as an outcome of CSTO dialogues, or in other forums. Unlike NATO, the CSTO is a registered observer to the UN General Assembly and has historically delivered statements during debates, and could indicate its collective closing of the nuclear umbrella. Similarly, Australia, Japan and the Republic of Korea could publicly recognise that their current reliance on nuclear weapons is contributing to proliferation in the region and, at a minimum, announce efforts to reduce this reliance on nuclear weapons.

Conclusion

A prohibition on using nuclear weapons is a necessary part of any nuclear weapons ban treaty. There should be no scope in this treaty that permits any legitimization of nuclear weapons. The countries that use the nuclear weapons of others as part of their security calculus will need to change, which will only be as difficult as they themselves make it. The majority of States have repeated, there is no justification for the use of nuclear weapons, under any circumstance.

The treaty must clearly prohibit the making, getting, having and using of nuclear weapons, as well as any form of assistance with those activities. Through this, the stigma against nuclear weapons will grow, therefore it is necessary to avoid potential gaps that might allow some states to continue to assign value to weapons designed to murder millions. Limiting the prohibition to only no first use, or using the negotiations to demand security assurances from the nuclear armed denies the determination of the majority that this treaty be an effective measure to attain and maintain a nuclear weapons free world.

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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