

Introduction

The ban treaty is the next big thing in multilateral nuclear disarmament. It is a chance for governments that support the rule of law, that believe in the power of multilateral institutions, and that believe rules matter, to engage in negotiations to uphold those beliefs. On 27 March, [negotiations](#) will start on a new treaty making nuclear weapons illegal. There is no treaty text on the table, though discussions have already brought up a number of ideas about what should be prohibited. Negotiations might cover a few different areas for prohibition that could be summed up as making, getting, having and using nuclear weapons.

Context

Nuclear weapons are the only weapon of mass destruction that has not yet been clearly prohibited by an international treaty. Nuclear weapons have the power to cause catastrophic harm. They are an inhumane weapon, designed to cause indiscriminate, intergenerational harm. Nuclear weapons are the most destructive weapon ever designed. They are such horrendous weapons that they have not been used in conflict since 1945, yet nearly 15,000 of them are in the arsenals of a handful of countries. The International Committee of the Red Cross has said that they don't see how any use of nuclear weapons could possibly be in line with international humanitarian law, but the weapons are not explicitly illegal, yet.

What will negotiations cover?

Negotiations might cover a few different areas for prohibition that could be summed up as making, getting, having and using nuclear weapons.

What that means will be different for states, depending on where they fall in the nuclear weapons reliance spectrum. Those who have already rejected the weapon will be able to add another layer to

reinforce their disdain for these inhumane, indiscriminate, uncivilised weapons, while those who are modernizing their arsenals will be subject to additional scrutiny and scorn. The group of States in between - those with nuclear weapons in their security strategies, but not possessing their own weapons - are in a unique position as negotiations will demand they choose between defending nuclear weapons or democracy.

Nuclear reliant states

While there are only nine nuclear-armed nations, there are States that rely on the nuclear weapons of others in their security strategies. Most of these States are members of the North Atlantic Treaty Organisation (NATO), however Australia, Japan, and the Republic of Korea also rely on U.S. nuclear weapons. In addition, the Collective Security Treaty Organization is also [understood](#) to have a nuclear umbrella arrangement.¹ This collection of 33 States will be impacted differently depending on the results of the nuclear weapons prohibition negotiations.

What will be in the treaty?

During meetings of the 2016 UN Open Ended Working Group to take forward multilateral nuclear disarmament (OEWG) a number of suggestions were

PAX Policy Brief | Nuclear Ban Treaty

put forward that could be included in an international legal instrument. This series seeks to take the idea of a treaty prohibiting the development, production, testing, acquisition, stockpiling, transfer, deployment, threat of use, or use of nuclear weapons, as well as assistance, financing, encouragement, or inducement of these prohibited acts as the point of departure, and uses [Annex II of the report of the Open Ended Working Group](#) as a reference point.² Some of these items are already dealt with in some form by

¹ See “Under my umbrella” by the International Law and Policy Institute, <http://nwp.ilpi.org/?p=5380>

² Report of the Open-ended Working Group taking forward multilateral nuclear disarmament negotiations, A/71/371, [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/276/39/PDF/N1627639.pdf?OpenElement)

international agreements, and a ban treaty will reinforce and complement what already exists.

In taking forward negotiations different approaches will “*vary in their applicability to all States, nuclear-armed States, non-nuclear-armed States and other States that continue to maintain a role for nuclear weapons in their security doctrines.*”³ We will look at the potential impacts of the elements that might be included in a nuclear weapons ban treaty from the perspective of these “other” nuclear reliant states.

[ny.un.org/doc/UNDOC/GEN/N16/276/39/PDF/N1627639.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/276/39/PDF/N1627639.pdf?OpenElement)

³ Ibid, p 12

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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What will we ban?

The question of scope is a key question for the negotiations. What will be banned under the treaty? Negotiators will have to decide what general prohibitions to include in the new treaty. Remembering that this treaty comes from the need to prohibit weapons designed to be inhumane and indiscriminate should remain a guiding principle.

Key Principles

PAX is a member of the International Campaign to Abolish Nuclear weapons, ICAN, which has laid out principles for a nuclear ban. In those principles, the campaign recommends states negotiate a non-discriminatory international legal instrument that would prohibit all activities related to making, getting, having or using nuclear weapons. In other words, activities like development, production, testing, acquisition, stockpiling, transfer, deployment, threat of use, or use of nuclear weapons need to be banned. In addition, helping to do these prohibited acts, through assistance, investment, encouragement, or inducement should of course also be prohibited.

The Open Ended Working Group on taking forward multilateral nuclear disarmament negotiations in 2016, suggested the scope of a prohibition could include prohibitions on the development, testing, including subcritical experiments and supercomputer simulations, production, acquisition, possession, stockpiling, transfer, use and threat of use of nuclear weapons, as well as on the production of weapons-usable fissile material.

Previous agreements

The new legally binding prohibition on nuclear weapons will reinforce and build upon existing instruments, including the nuclear Non Proliferation Treaty (NPT) and the Nuclear Weapon Free Zone treaties. The NPT, while successful in minimizing nuclear weapon proliferation has some perceived problems- not least the absence of a comprehensive prohibition, for all States, on items like the development and production – or making of- nuclear weapons. The two tiered system within the NPT leaves room for nuclear weapon modernisation programmes, new nuclear weapon capability development, and production of additional weapons. The new instrument, building on the NPT and other agreements as a starting point, can address some of these issues more emphatically, strengthening the non proliferation regime and actually making nuclear weapons illegal.

PAX Policy Brief | Nuclear Weapon Free Zones

What is a nuclear weapon?

Questions about definitions also arise during negotiations, and are sometimes considered in relation to the question of scope. The OEWG used the same definition as the Treaty of Tlatelolco (Latin American Nuclear Weapon Free Zone). In Article 5 of that Treaty, nuclear weapons are defined as:

“any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.”

In 2015, five of the nine nuclear armed states released a Glossary on Nuclear Terms. That document defined a nuclear weapon as a:

“Weapon assembly that is capable of producing an explosion and massive damage and destruction by the sudden release of energy instantaneously released from self-sustaining nuclear fission and/or fusion.”

Negotiators will decide the scope of the treaty, including whether or not to include a specific definition of what actually constitutes a nuclear weapon. It is interesting to note that several treaties related to nuclear weapons, notably the NPT and the **CTBT do not** explicitly define nuclear weapons within the treaty text. This too is an option for negotiators of the ban treaty.

Nuclear Weapon Free Zones

This year is the 50th anniversary of the first regional nuclear weapons ban- the Treaty of Tlatelolco. The Latin American Nuclear Weapon Free Zone agreement pre-dates the NPT, and this looks at some lessons that can be learned from Nuclear Weapon Free Zone agreements as we prepare for the global nuclear ban.

There are five regional nuclear weapon free zone (NWFZ) treaties in place-

- Treaty of Tlatelolco — Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
- Treaty of Rarotonga — South Pacific Nuclear Free Zone Treaty
- Treaty of Bangkok — Treaty on the Southeast Asia Nuclear Weapon-Free Zone
- Treaty of Pelindaba — African Nuclear-Weapon-Free Zone Treaty
- Treaty on a Nuclear-Weapon-Free Zone in Central Asia

Mongolia is also a self-declared free zone, recognised by the UN General Assembly in resolution 55/33S. There are also treaties that deal with the Antarctic, Outer Space, the Moon, and the Seabed.

A significant part of the world is covered by these agreements. However, nuclear weapons do not limit themselves to any borders, and the use of nuclear weapons by states in the northern hemisphere could have catastrophic consequences- even on the citizens of States living in the nuclear weapon free zone areas.

PAX Policy Brief | Nuclear Weapon Free Zones

What is consistent across the zones?

All of the five regional zones prohibit the production of nuclear weapons, stationing or deployment, acquisition or control of nuclear weapons. Each of these treaties also includes prohibitions on assisting with any of these acts, though these vary in detail depending on the different treaty (and also likely depending on when it was negotiated).

All of these five zones also request signature and ratification by not only the regional parties, but also contain special protocols for the nuclear weapon states. This continues the practice of a two tiered systems of nuclear weapons law- and reinforces the need for a global prohibition that does not distinguish between past possession practices of States parties.

The Central Asian treaty (Semipalatinsk) is the most recently negotiated. It sums up the consistency across the five zones in its preamble:

Recognizing that a number of regions, including Latin America and the Caribbean, the South Pacific, South-East Asia and Africa, have created nuclear-weapon-free zones, in which the possession of nuclear weapons, their development, production, introduction and deployment as well as use or threat of use, are prohibited, and striving to broaden such regime throughout the planet for the good of all living things

What is different?

As time progressed from the 1967 Tlatelolco treaty to the 1985 Rarotonga, 1995 Bangkok, 1996 Pelindaba and on through the 2006 Semipalatinsk treaty several issues emerged that were not in the agreement conducted fifty years ago this week. This is far from surprising, and reinforces the notion of disarmament law as evolving and adapting to new circumstances.

An example of this is the prohibition in the Pelindaba Treaty of research nuclear weapon research. This goes further than the other treaties, and is likely a result of lessons learned from the experience with South African decommissioning of their nuclear weapons programme.

The Semipalatinsk treaty also requires assistance towards remediation of areas contaminated as a result of past activities. The treaty gets its very name from the highly contaminated former Soviet nuclear test site. The development of nuclear weapons left behind more than traces of toxicity. In some places, you can still see the pockmarked landscape from nuclear testing. Those living near nuclear test sites, and other nuclear weapon development facilities- in Australia, Algeria, China, the Pacific Islands, Russia and the US for example, continue to be impacted by the legacy of nuclear weapon development. Only the Central Asian NWFZ treaty starts to address these questions.

Another difference across the treaties are the enforcement mechanisms. Tlatelolco established the Organisation for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), while Pelindaba would bring questions to the African Commission on nuclear energy. Three of the five agreements would refer disputes to the International Court of Justice, while the IAEA, UN Security Council and UN General Assembly are mentioned as possible arbiters in the Bangkok treaty.

What next?

States will need to figure out how to deal with some of the differences that have emerged in the fifty years of regional nuclear weapon prohibitions, but it is clear that the baseline for those negotiations must build on the existing prohibitions. Lessons from later

PAX Policy Brief | Nuclear Weapon Free Zones

negotiations can and should strengthen the new treaty. Currently, some NATO members are party to Nuclear Weapon Free Zone agreements because of some territories lying within the geographical zones. In some cases this has likely been confusing and difficult for some States (like those with overseas territories within the zones). There are a lot of opportunities to regain global consistency with the upcoming negotiations, and ensure that this prohibition seizes the opportunity to build a legal basis for achieving and maintaining a world without nuclear weapons.

Conclusion

Building on the nuclear weapon free zones and the NPT as a baseline or starting point would bring the majority of states in the world into general agreement. Regional zones have strengthened non-proliferation, increased security and protected populations. However, there are still many outside the zones, and there is scope to reflect the evolution of disarmament law. During the ban negotiations, states should consider how they will address the rights of those affected by nuclear weapons, make sure the financial pathways to nuclear weapon producers are closed off, and clarify that no states or entity has a right to put populations at risk by the ongoing possession and modernisation of nuclear arsenals.

About the program

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Making nuclear weapons

What could prohibiting the making of nuclear weapons look like for the countries relying on nuclear weapons in security strategies, but not possessing nuclear weapons of their own? When it comes to making nuclear weapons there are a number of steps necessary to make a bomb, like research, development, producing, or testing. Some of these steps have already been prohibited by international legal agreements, though not all of those prohibitions are currently in force. This piece looks at these steps in relation to existing agreements the nuclear umbrella countries are parties to.

Testing

NATO's non nuclear armed allies are all party to the Comprehensive Test Ban Treaty (CTBT) which has not entered into force. However, its provisions are considered by many to be binding norms. The CTBT explicitly requires states "not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control." It also requires states parties "to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion".¹ NATO's non-nuclear weapons possessing members have already ratified this treaty. The only NATO member that has not ratified the CTBT is the United States.

Although the CTBT has not entered into force, many do consider there to be a norm against full scale nuclear testing, demonstrated by the global outrage and condemnation every time North Korea has tested nuclear weapons. While it is meant to be comprehensive, the CTBT does leave room for what are called 'subcritical nuclear experiments', in which there is no full scale nuclear detonation. A subcritical

test is a combination of computer modelling and detonation of convention explosives. After signing the CTBT, the US was the first to conduct a subcritical test, in July 1997. That test, called "Rebound" was considered by many to be a sign of bad faith and against the spirit of the CTBT. Since then Russia and the UK conducted these subcritical tests and China is also suspected to have done so. For states that are seeking to make nuclear weapons for the first time, subcritical experiments are not likely to be part of the process, however for states seeing to improve their arsenals, this CTBT loophole could be exploited.

Development

Article II of the nuclear Non Proliferation Treaty (NPT) obliges non-nuclear weapon states "not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices". However, it does not elaborate on the processes leading to the manufacture of nuclear weapons. The issue of development can be seen to cover the research needed in advance of making the various components of nuclear weapons. Including explicit reference to development of nuclear weapons in a ban treaty could be understood to include all of the steps leading to the

PAX Policy Brief | Making Nuclear Weapons

actual manufacture of a nuclear weapon. The Open Ended Working Group on taking forward multilateral nuclear disarmament negotiations (OEWG), in Annex II of its report, also included the development concept.

Producing

The NPT explicitly prohibits the manufacturing nuclear weapons, however, that provision is applied only to the non-nuclear weapon states party. The production of nuclear weapons could be explicitly included in a ban treaty as a way to reinforce the NPT. A ban could also go further, by prohibiting the encouragement of the production of nuclear weapons, and explicitly prohibit financing of nuclear weapon producing companies as a clarification in line with the vision of the prohibition on assistance.

Currently, a number of non-nuclear weapon states that rely on nuclear weapons, though don't have their own nuclear weapons host the headquarters of financial institutions with significant investments in nuclear weapon producing companies. Financial institutions in Australia, Belgium, Canada, Denmark, Germany, Italy, Japan, The Netherlands, Norway, and Spain among others have investments in nuclear weapons producing companies.² Investment in arms has become an important topic in international financial institutions' social responsibility divisions, and many financial institutions still seek guidance from their governments on this issue. Depending on the eventual ban treaty text, this form of assisting with

production of nuclear weapons could be prohibited and States could elaborate the time frames needed to implement this prohibition on financing as part of their national implementation legislation.

States could also consider how to address the production of key components for nuclear weapons- including special fissionable materials. However, as the treaty will make it illegal to have the weapons and to make the weapons, logically that should also cover the unique materials for these weapons. Recognising that some of these materials have other purposes and states that do not possess nuclear weapons are all subject to IAEA agreements designed to prevent diversion of materials towards weapons purposes, this new instrument should focus on the core prohibitions and not risk distraction into the fissile materials discussions. There is another process mandated by the General Assembly to move forwards on that issue and these processes have the potential to be mutually reinforcing.

Conclusion

When it comes to making nuclear weapons there are quite a few steps. Though the information is definitely available on how to do it, there is more that could be examined in this part of a prohibition. The general idea of prohibiting all aspects of making nuclear weapons is something that should be further elaborated and considered in the nuclear ban negotiations.

¹ Article I, Comprehensive nuclear Test Ban Treaty (1996)

² Snyder, S., van der Zeijden, W, Beenes, M., Don't Bank on the Bomb | A Global Report on the Financing

of Nuclear Weapons Producers. Available at: <http://www.dontbankonthebomb.com/> .

Getting nuclear weapons

How do you get a nuclear weapon? If you don't make it yourself, then it's probably come by acquisition or transfer. This piece will look at those two concepts, and what prohibiting them could mean for nuclear umbrella countries.

Acquisition

The issue of developing nuclear weapons brought up the nuclear Non Proliferation Treaty (NPT). For nuclear reliant states, all of whom are party to the NPT, Article II obliges non-nuclear weapon states *“not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices”*. A ban treaty therefore is a way to reinforce the existing agreements, and also make sure that they are universally applicable to all States party (as opposed to only applicable to a category of countries).

The NPT currently splits the responsibilities around acquisition to the nuclear armed and the rest. The nuclear armed countries agree not to *“assist, encourage or induce the rest not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.”* The rest agree more broadly just not to get nuclear weapons, or *“not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.”* A ban will reinforce that any acquisition is illegal.

Financing acquisition

Negotiators of the ban treaty can also strengthen their efforts against the acquisition of nuclear weapons. One way to do this is to expand the language from the NPT and clarify the growing understanding that assistance includes financing and therefore make it clear that the financing of any acquisition will be prohibited. Nuclear reliant countries can prepare for these prohibitions in a few ways, including by putting in place national legislation now which prohibits investment in private companies that are associated with the production of key components for nuclear arsenals. Already in Switzerland and Lichtenstein there is legislation that criminalizes intentional investment in nuclear weapons. There are at least 10 examples of national legislation prohibiting investment in the production of cluster munitions, our colleagues working to Stop Explosive Investments (in cluster munitions) have done a great analysis of this type of legislation, providing lessons for future negotiators.¹

Transfer

Getting nuclear weapons by a transfer from a nuclear armed country is a delicate issue for some of NATO's non nuclear armed allies. The NPT explicitly requires states *“not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or*

¹ See more about national legislation prohibiting investment in cluster munitions here: <http://www.stopexplosiveinvestments.org/legislation>

PAX Policy Brief | Getting Nuclear Weapons

explosive devices directly, or indirectly'. Questions have been raised about potential NATO noncompliance with this article for decades, specifically in relation to the forward deployment by the United States of nuclear weapons on the territory of (now) five NATO members, and the training of their military personnel to use those weapons. In strict interpretation of the Article, handing over control of these weapons would mean the US would violate Article I of the NPT, and the recipient state would violate Article II. The 1985 NPT Review Conference agreed as part of its Final Document that the Treaty remains in force "*under any circumstances*", with the intention of halting any NATO nuclear sharing. However, Belgium, Italy, Germany and the Netherlands continue to undergo preparations to accept control over nuclear weapons. A treaty banning nuclear weapons should clarify any outstanding questions or misconceptions. States that currently have infrastructure for hosting nuclear weapons, when joining a ban treaty, should outline a clear path towards closing or converting the infrastructure in place and ending the national preparations that currently exist in some countries to maintain a readiness to accept the transfer of nuclear weapons.

For other nuclear reliant states- like those in the CSTO, Australia, Japan or the Republic of Korea, transfer issues would require dialogue shifts with their respective nuclear weapon providers (the Russian Federation and the US), and could impact decisions on berthing. However, there would likely be little infrastructure changes necessary and only political agreements that need shifting.

Conclusion

Any plausible pathway to getting nuclear weapons should be prohibited in a nuclear ban treaty. This will reinforce the existing obligations under the NPT, while clarifying some perceived questions around that treaty which allow for questionable national practices in some states. A treaty prohibiting nuclear weapons would be incomplete without closing all pathways to getting the bomb.

About the program

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Having Nuclear Weapons

When considering what it means to have nuclear weapons, the ideas of stockpiling or possession of the weapons comes to mind first. Other weapons prohibitions talk about prohibiting the stockpiling or retention of the weapons, all of which comes back to the main issues- once you sign up, you agree not to have them.

Making it illegal to have nuclear weapons is not only a matter of only looking at states possessing nuclear weapons. Naturally, if you agree to prohibit having a weapon, you are by default agreeing to prohibit the deployment of that weapon. The deployment question is therefore an interesting one for NATO members that host US nuclear weapons on their territory (Belgium, Germany, Italy, the Netherlands and Turkey). For the rest of NATO's members, all of the associated ideas behind a prohibition on having nuclear weapons will simply reaffirm what they have already agreed under the NPT.

NATO, deployment and the ban

A nuclear weapons ban treaty could have an impact on the infrastructure necessary to maintain forward deployment capacities. In meeting obligations of a new legal instrument, the facilities that must currently remain certified to host nuclear weapons would no longer need to meet those standards (though activists have shown that they don't do a good job anyway). The ban treaty could require that the 180 or so forward deployed B61 nuclear bombs return to the US as a practical way to implement the treaty. There might also be a reduction in the need for guns, guards and gates at some of the bases where US nuclear weapons are currently stored in Europe. Whether the bunkers themselves would need to be dismantled is a question for each state to decide on their own. The prohibition could also lead to the end of trainings that some air forces undergo to handle nuclear weapons (though perhaps more due to a prohibition on use than on possession).

In some situations, additional bilateral negotiations might need to be undertaken on the Status of Forces

Agreements, or Agreements for Cooperation for Mutual Defense Purposes related to deployment and transfer arrangements. Turkey is a bit of an outlier as it is commonly understood that the Turkish Air Force does not train to accept transfer of US nuclear weapons, as opposed to the Belgian, German, Italian and Dutch. It is unlikely that a ban treaty would require states to give up their Dual Capable Aircraft, as these planes are also usable for conventional missions, but a ban treaty could require modifications of the planes to prevent future nuclear weapons capabilities.

A ban treaty would replace the secret practices around these agreements with a transparent, accountable and democratic practice in accordance with NATO ideologies.

NATO's most recent Strategic Concept (2010) continues the unique policies of nuclear forward deployment and of 'nuclear sharing', by declaring that the Alliance will "ensure the broadest possible participation of Allies in collective defence planning on nuclear roles, in peacetime basing of nuclear forces,

PAX Policy Brief | Having Nuclear Weapons

and in command, control and consultation arrangements”.¹ Nevertheless, the Strategic Concept is formulated carefully so it does not block changes. In theory, the text would allow a nuclear weapon free NATO without contradicting the non-binding political agreement.

It is good to remember that NATO nuclear sharing practices are not enshrined in legal agreements (there is no reference to nuclear weapons in NATO's founding document, the Washington Treaty) so changes to the core efforts and agreements that legally bind alliance members to each other's collective security would need no adjustment. It would only be the political statements and documents that would need to shift. As the International Law and Policy Institute argues: *“concerns about the political implications for NATO ignore historical variations in member state military policy and underestimate the value of a ban on nuclear weapons for promoting NATO's ultimate aim: the security of its member states.”* If NATO member states really want to promote the ultimate aim of security for their member states, then efforts to shift language in the alliance's political outcome documents to reflect strengthened international law will do that much more effectively than encouraging or inciting the continued possession of nuclear weapons.

Nuclear Sharing

Politically there would need to be a series of discussions inside of NATO to facilitate a transition away from the current nuclear sharing practices. The nuclear armed NATO members undertook an obligation (back in 2010) to reduce the role of nuclear weapons in their security strategy and doctrines, and NATO's non nuclear armed allies bear responsibility for demanding compliance with that agreement. NATO continues to assert *“Arms control, disarmament, and non-proliferation continue to play an important role in the achievement of the Alliance's security objectives. Both the success and failure of these efforts can have a direct impact on the threat environment of NATO.”*² At the same time, the alliance reaffirms, *“As long as nuclear weapons exist, NATO will remain a nuclear alliance.”* A ban treaty would force NATO members to clarify on national and at the alliance level a shared public understanding of what exactly a nuclear alliance is, and under what circumstances that includes the use of nuclear weapons causing catastrophic humanitarian harm. Even proponents of a more 'robust' role for nuclear weapons across NATO reaffirm that *“NATO should also underscore that all Allies continue to honour their international obligations and commitments, including on nuclear weapons.”*³

NATO member states have reserved the right to adopt independent national policies on nuclear weapons as long as the Alliance has existed. Some of these national positions already restrict participation in the

¹ Active Engagement, Modern Defence – Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization (2010), page 15: http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_publications/20120214_strategic-concept-2010-eng.pdf

² NATO – Wales Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Wales. NATO. Available at:

http://www.nato.int/cps/en/natolive/official_texts_112964.htm [Accessed September 11, 2014].

³ Camille Grand, 2016. Nuclear deterrence and the Alliance in the 21st century. NATO Review. Available at: <http://www.nato.int/docu/review/2016/Als-o-in-2016/nuclear-deterrence-alliance-21st-century-nato/EN/index.htm> [Accessed February 20, 2017].

PAX Policy Brief | Having Nuclear Weapons

nuclear weapons activities of the Alliance, without restricting these states from participating in the work of the Alliance more generally. States can also change their role in various planning groups, and have historically done so, including in the Nuclear Planning Group.

Attitudes and agreements will have to change inside NATO with a nuclear weapons prohibition, but the core principles of international cooperation and interdependent security across the alliance will not. A ban treaty will also bring greater international attention to and pressure on NATO nuclear sharing practices as contradicting norms on nuclear weapons. A ban treaty reaffirms existing legal obligations not to transfer or acquire nuclear weapons. Finally, a ban treaty supports a shift in nuclear weapons policy setting discourse away from instruments of stability and deterrence to the recognition of them as weapons of terror and instability.

Conclusion

To be fair, this piece was meant to be all about having nuclear weapons and instead delved into questions around the deployment of those weapons. A nuclear ban treaty must include the a clear prohibition so that no one can have nuclear weapons, how that deals with deployment issues is of course clear- as that too will be illegal.

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Using Nuclear Weapons

This treaty will have a significant impact on the strategic thinking going on inside the nuclear armed establishments, because its 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.”¹

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

PAX Policy Brief | Using Nuclear Weapons

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 indicated its collective closing of the nuclear umbrella. Similarly, Australia, Japan and the Republic of Korea could publicly recognised 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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Assistance with Nuclear Weapons

Prohibiting assistance, inducing, and encouraging others to commit prohibited acts are found in most weapons prohibition treaties as well as in the nuclear weapon free zone treaties. In their guide to the issues, IJPI explained that according to other weapons prohibitions "assistance is considered an illegal act regardless of whether or not the assisted state is party to the treaty."

What about NATO?

For countries that continue to keep nuclear weapons in their security strategies and doctrines, questions around assistance will rise fairly quickly. Will they be able to remain in the NATO alliance? Will they need to renegotiate bilateral security agreements? What will happen to the Status of Forces agreements within nuclear weapon host countries? Will NATO members need to excuse themselves from the Nuclear Planning Group?

For a number of these questions, the answer is simply, yes. If you agree to prohibit anyone from inducing the use of nuclear weapons, it stands to reason that you cannot maintain an agreement for someone to use nuclear weapons on your behalf. If you agree that nuclear weapons should not be used, then helping to use nuclear weapons- including by planning on how to use them- would also be prohibited.

However, for NATO's non nuclear weapon possession members, would not have to leave the Nuclear Planning Group. The group was initially established to create a consultative process on the alliance's nuclear doctrine, and has evolved to be one that provides advice to defence ministers on nuclear issues. Therefore, in the context of a ban treaty, it would be quite useful to have some members who have completely prohibited the making, getting, having and using of nuclear weapons to stay in that group and advise the alliance on how to transition away from its reliance on massive nuclear violence.

Alliance members and others however, when they stop providing assistance to the use of nuclear weapons, will also have to stop participating in joint exercises designed to practice the use of nuclear weapons. This will have an immediate impact of

reducing the risk of accidental nuclear weapons use, and will serve as a de-escalation measure.

What about other nuclear reliant states?

Right now, in North East Asia, there is a cycle of exercise- test- exercise- test going on. Since January, the US and Republic of Korea have engaged in their annual months long exercises, that [include](#) "the deployment of US *strategic* assets"¹ (emphasis added). [Reports](#)² of increased activity at North Korean nuclear facilities followed. Like [chintz](#) curtains, this pattern is not new or particularly inspiring. What is new, is that if Japan, or South Korea join a nuclear ban treaty, their role in participating in these types of exercises could be curtailed. That will remove incentives to respond, and could lower the risk of nuclear weapons use in the region. (For more on other ways to reduce regional tension, check out some of the stuff over at [38North](#)).

Following the money

In addition to ending involvement in nuclear exercises, there are other concrete actions that states can take to make sure they don't assist anyone with getting, making, having or using nuclear weapons. One of these is to follow the money.

A lot of the work to make nuclear weapons more useable, more deadly, and more available is done by private contractors. Publicly available information shows that there are private companies involved in the arsenals of at least France, India, the United Kingdom and the United States. Explicitly prohibiting the financing of nuclear weapon producers, including any support, financially or otherwise, to anyone involved in nuclear weapon activities with the exception of those activities required for safe stockpile elimination would have an effective impact on the companies and states involved with the production

¹ <http://www.straitstimes.com/asia/east-asia/south-korea-us-forces-begin-joint-military-drills>

² <http://38north.org/2017/02/punggye022417/>

PAX Policy Brief | Nuclear Weapons Assistance

and retention of nuclear weapons and increase the stigma attached to nuclear weapons.

The modernisation effort that is tripling the US nuclear arsenal kill power, is not done solely by the US Navy (or army, or department of defence or department of energy). In fact, the work is done by [Lockheed Martin](#), a private contractor. Lockheed relies on investments from the financial sector to be able to do its work, and [financial institutions](#)³ from Australia, Canada, France, Japan and the US (among others) provide them with the capital needed to conduct operations- operations that include tripling the kill capacity of the US nuclear weapons arsenal.

Financial institutions make their own judgements, but also look to governments to provide clarity on what constitutes unethical investment. For example, research by PAX shows that many financial institutions refer to the Non-Proliferation treaty (NPT) as a justification for the exclusion of nuclear weapon producers. A significant number also refer to the NPT to argue that nuclear weapons are *not* comprehensively prohibited and therefore still a legitimate investment.⁴ The inclusion of a prohibition on financing in a new treaty banning nuclear weapons would make it clear that the nuclear weapons business is not legitimate, just as nuclear weapons are not legitimate.

Conclusion

When states start talking about the concepts they want to see included in the new nuclear weapons prohibit treaty, they will need to talk about a clear prohibition on assistance. No one should be allowed to help others get, make, have or use nuclear weapons- and that includes by providing money to do these things. Financing is an important part of assistance. Including an explicit mention of financing will reinforce the growing understanding that this is a particular type of assistance and will provide clarity for states implementing the new treaty. It can also limit the flow of capital to the companies involved in nuclear arsenals of states that remain outside of the new treaty for the time being. It is also in line with states' intent and purpose of a nuclear ban treaty to not only effectively ban these weapons but to extend the logic of outlawing nuclear weapons to the financial sector.

The relationship of the nuclear reliant states to the nuclear possessors will need to change, but those relationships do not need to end. In fact, by engaging in the nuclear ban treaty process, the countries that don't have, but rely on nuclear weapons, will be in a position to shape how their future engagements take place. As Dutch Foreign Minister [said in the Conference on Disarmament recently](#) "The Netherlands has chosen to take part constructively, with an open mind and without being naive. We will examine how and to what extent a ban can contribute to nuclear disarmament."⁵ What negotiators consider prohibiting under the concept of assistance, can go a long way towards effectively contributing to nuclear disarmament.

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³ <http://www.dontbankonthebomb.com/lockheed-martin/#toggle-investors>

⁴ Don't Bank on the Bomb 2016 available at <http://www.dontbankonthebomb.com/report/>

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[http://unog.ch/80256EDD006B8954/\(httpAssets\)/C82937451C88785FC12580D40057CADB/\\$file/1408+Netherlands.pdf](http://unog.ch/80256EDD006B8954/(httpAssets)/C82937451C88785FC12580D40057CADB/$file/1408+Netherlands.pdf)