

# Banned but Allied.

Next steps for NATO Alliance members after the adoption of the Treaty on the Prohibition of Nuclear Weapons

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### **About the author**

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### **About PAX**

PAX stands for peace. Together with people in conflict areas and critical citizens in the Netherlands, we work on a dignified, democratic and peaceful society, everywhere in the world. PAX brings people together who have the courage to stand for peace. We work together with people in conflict areas, visit politicians and combine efforts with committed citizens.

### **About the No Nukes Project**

No Nukes is PAX's campaign for a world free of nuclear weapons. No Nukes is on the steering group of the International Campaign to Abolish Nuclear weapons – ICAN. The No Nukes project seeks opportunities to strengthen the global non-proliferation regime and to accelerate global nuclear disarmament by stigmatising, outlawing and eliminating nuclear weapons.

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# Introduction

On 7 July 2017, 122 countries voted to adopt the Treaty on the Prohibition of Nuclear Weapons (TPNW). This prohibition treaty is rooted firmly in international humanitarian law, and helps create the conditions for the total elimination of all nuclear arsenals. It is the result of shift in global discourse to focus on the impact of nuclear weapons. This refocusing of the problem to nuclear weapons as weapons which by design cause indiscriminate, disproportional, and inhumane suffering has afforded an opportunity to revitalise the global nuclear weapons debate. This paper examines the potential impact of the provisions in the Treaty from the perspective of a NATO non nuclear armed member. The prohibitions included in the treaty to: develop, test, produce, manufacture, otherwise acquire, possess or stockpile, transfer, receive, use, threaten to use, allow the stationing or installation or deployment of nuclear weapons, as well as the prohibition to assist, encourage or induce in any way, anyone to engage in the activities prohibited, are all conditions for nuclear disarmament. Broadly, this paper looks at what the non nuclear armed members of NATO should prepare for as getting, having and using nuclear weapons are now explicitly illegal in the Treaty on the Prohibition of Nuclear Weapons.

The 2010 nuclear Non Proliferation Treaty (NPT) Review Conference, "*expresse[d] its deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons.*"<sup>ii</sup> This was the last agreed outcome among the members of the NPT and it spurred action to further examine the potential impact of any use of nuclear weapons. The overwhelming conclusion from three intergovernmental conferences (hosted in Norway (2013), Mexico (2014) and Austria (2014)) was that there was no mitigation or remediation realistically possible, and the only course of action was to take all efforts leading to the prevention of any use of nuclear weapons, at any time. The UNGA followed by establishing, conducting and concluding negotiations on the TPNW in a manner that was open to all governments to participate.

NATO members also participated in the series of conferences on the Humanitarian Impact of Nuclear Weapons, and all (except France) were at the final conference in Vienna. Some NATO members described the growing broad concern around the humanitarian impact as a way to reinforce pressure on the nuclear armed states to fulfil existing obligations including under Article VI of the NPT.

Recent developments demonstrate the necessity for states to make a decision- either prepare for the eventual use of nuclear weapons (the likely result of new nuclear arms developments and actual threats to unleash fire and fury) – or States can choose to facilitate the end of nuclear weapons by supporting the early entry into force of the Treaty on the Prohibition of Nuclear Weapons. NATO members should be preparing to stop hosting foreign nuclear weapons, shifting political statements to reduce reliance on nuclear weapons (and nuclear tensions), resist the development and deployment of new nuclear weapons or weapons with new nuclear capabilities and re-interpret national burden sharing commitments in light of long term needs of the alliance. Historically a number of NATO members have shown leadership in also outlawing the financing of the production of prohibited weapons through national legislation, and this is also a step that would support the goal of a nuclear weapons free world.

Building on the foundations of nuclear disarmament and non-proliferation towards the total elimination of nuclear weapons is an ongoing process. This paper identifies actions that can be taken in the near term to reduce tensions, build confidence and move in step down the path towards the end of nuclear weapons. ♦

# Making & Getting

There are a number of steps included in making or getting nuclear weapons. These are prohibited under Article 1 of the TPNW and include development, producing, testing, manufacturing, transferring and receiving the transfer of nuclear weapons. The TPNW reinforces prohibitions found in other legal instruments and applies to all parties without distinction.

Making nuclear weapons is generally considered to require nuclear testing, hence the prohibitions on testing to slow the arms race. NATO's non nuclear armed allies are all party to the Comprehensive Test Ban Treaty (CTBT) which has not entered into force. Despite this, there is a clear norm against explosive nuclear testing. 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*".<sup>ii</sup> As NATO's non-nuclear weapons possessing members have already agreed to abide by this treaty, they are unlikely to have any further obligations or restrictions concerning nuclear testing in the TPNW. The TPNW reinforces the norm of CTBT, and includes language recognizing the vital importance of the CTBT and its verification system in the global non-proliferation and nuclear disarmament regime.

For NATO members, all of whom are party to the nuclear Non-Proliferation Treaty, Article II obliges non-nuclear weapon states "*not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices*". What is not explicitly prohibited in the NPT is the encouragement or inducement of these acts, though that is covered by the TPNW.

As States continue ratifying the TPNW, discussion will take place as to the range of activities that national legislations will prohibit related to inducement or encouragement to manufacture nuclear weapons. Currently, eight of NATO's non nuclear armed allies have financial institutions with headquarters in their countries that have investments in companies associated with the ongoing production of key components for nuclear weapons. Financial institutions operating in Belgium, Canada, Denmark, Germany, Italy, the Netherlands, Norway and Spain have investments in nuclear weapons producing companies, while institutions in Denmark, Italy, the Netherlands, Norway the UK and the US already have comprehensive policies preventing any financial association with the producers of (key components for) nuclear weapons.<sup>iii</sup> 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. During negotiations of the TPNW, a number of states indicated they understand financing to be included in the prohibition on assistance in the treaty. States could elaborate the time frames needed to implement this prohibition on financing as part of their national ratification procedures.

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 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, these countries continue to undergo preparations to accept control over these nuclear weapons. The

TPNW suffers from no such ambiguity in interpretation, as it explicitly prohibits States to “*Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.*”

The TPNW would therefore have an impact on the infrastructure necessary to maintain forward deployment capabilities. It would require the return of the current 180 or so forward deployed B61 nuclear bombs to the US as a practical implementation measure. Currently, the custody, repair, and improvements to the weapons and the storage bunkers are the responsibility of the U.S. Air Force, while the other measures including perimeter security (fences, monitors, and motion detectors) and access to the storage sites is the responsibility of the host. There are currently operations underway in the US that would require the physical removal of these weapons, to be replaced by a new design (B61-12). As the bombs will already need to be removed in the coming years, there is an excellent opportunity to simply not return them. When the host states join the TPNW, they will need to declare these facilities and operations, as well as clearly explain their role in the trainings, exercises, inspections, maintenance operations and so forth for each of the related facilities. It is likely that the facilities designed to host the nuclear bombs would require physical dismantlement, and the trainings that some (the Belgian, Dutch, German, and Italian) air force squadrons undergo to handle nuclear weapons would cease. In some situations, bilateral modifications might be made on the 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 the TPNW would require states to give up their Dual Capable Aircraft, as these planes are also usable for conventional missions, but a the treaty could require modifications of the planes to prevent future nuclear weapons capabilities. There are also recent rumours that the weapons stored in Turkey may have been consolidated to other European air bases.<sup>1</sup>

Discussions about the relevance of US nuclear weapons deployed in Europe to NATO strategies are always ongoing. The US Nuclear Posture Review recommendation to develop new types of nuclear weapons, including low-yield Trident warheads and submarine launched cruise missiles to deal with Russian limited exchange scenarios. These new nuclear weapons would invalidate the role of forward deployed B61 bombs in Europe and the suggestion to develop them signals that the NATO nuclear sharing mission is no longer credible.

It is well known that in advance of the 2010 NATO Strategic Concept a number of countries called for an end to the nuclear sharing practices, including Belgium, Germany, Luxembourg, the Netherlands, and Norway. The NATO Parliamentary Assembly is currently reviewing the concept of “Burden Sharing” across the alliance, something that had historically been tied to the possible use of nuclear weapons (specifically to ensure broad participation in the decision to violate the core principles of international humanitarian law through the use of nuclear weapons). This NATO Parliamentary Assembly paper should spark a renewed discussion inside of NATO that appropriately reflects citizen opinion on nuclear weapon use and also considers the TPNW.

It is important to recall that the latest outcome document from an NPT Review Conference, the 2010 Consensus text included an obligation to reduce the role of nuclear weapons in security strategy and doctrines, NATO's non nuclear armed allies bear responsibility for demanding compliance with that agreement. NATO continues to assert that “*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.*”<sup>iv</sup> At the same time, the alliance reaffirms, “*As long as nuclear weapons exist, NATO will remain a nuclear alliance.*” The TPNW offers NATO members an

<sup>1</sup> See for example, Jeffrey Lewis, “America’s Nukes Aren’t Safe in Turkey Anymore,” Foreign Policy, July 18, 2016. <http://foreignpolicy.com/2016/07/18/americas-nukes-arent-safe-in-turkey-anymore/>.

opportunity to clarify on national and at the alliance level a shared public understanding of what exactly they want the alliance to stand for, in dealing with future threats.

There are already a number of norms around nuclear weapons that NATO members should be concerned about defending as rhetoric and postures change, including norms against nuclear testing and development of new types of nuclear weapons. New capacities of nuclear weapons that significantly lower the threshold for use are also an upcoming risk. The TPNW provides the opportunity to strengthen these norms, as well as reaffirms existing legal obligations not to transfer or acquire nuclear weapons.

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.*"<sup>v</sup>

The issue of burden sharing under political discussion, and the historical reality of NATO policies on nuclear weapons is that they change when the US issues new nuclear posture reviews; the moment is ripe for NATO alliance members to support one another in rejecting any breach of existing nuclear weapon norms, halting a new nuclear arms race, and engaging proactively in creating sustainable conditions for nuclear disarmament by demonstrably reducing the role and value of nuclear weapons. ♦

# Having

When considering what it means to have nuclear weapons, the ideas of stockpiling or possession of the weapons themselves comes to mind first. There is also the question of where you place the weapons you have- the deployment issue. Most non nuclear NATO members will have no new obligations or responsibilities on these issued under the Treaty on the Prohibition of Nuclear Weapons. Primarily the prohibition will impact those states already in possession of nuclear weapons. However, the issue of deployment will have an impact on some NATO members in much the same way as fulfilling obligations to prevent transfer of the weapons would.

Article 1 (g) of the Treaty on the Prohibition of Nuclear Weapons states: “*Each State Party undertakes never under any circumstances to: (g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.*” In meeting these obligations, the facilities that must currently remain certified to host nuclear weapons would no longer need to meet those standards, and the B61 bombs that are currently deployed there would need to be returned to the US. 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 once they are decertified is a question that would likely be left up to each state to decide on their own, some may choose to retain them for other purposes.

The issue of currently deployed weapons would likely be dealt with in a similar way as implementation of the prohibition on transfer. In meeting treaty obligations not to *deploy* weapons, the non nuclear armed NATO members would have no issue. Implementation of agreements not to *accept deployment* of weapons would have a number of implications. On a legal level, there is a chance that some Status of Forces Agreements, or Agreements for Cooperation for Mutual Defense Purposes, negotiated between NATO's nuclear armed and nuclear host states would need to be revisited and renegotiated. The TPNW provides an opportunity to 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, and in command, control and consultation arrangements*”<sup>vi</sup>. NATO members elaborated on this in the 2012 Defence and Deterrence Posture Review, that requests the North Atlantic Council to “*task the appropriate committees to develop concepts for how to ensure the broadest possible participation of Allies concerned in their nuclear sharing arrangements, including in case NATO were to decide to reduce its reliance on non-strategic nuclear weapons based in Europe.*”<sup>vii</sup> These agreements create the scope for a broad and inclusive dialogue on the issue of nuclear weapon deployment and keep the option open to reduce the reliance on nuclear weapon in NATO strategies, in line with the NPT commitments of the allies. These consensus documents, while encouraging consultations, retain the long standing NATO practice of national sovereignty over nuclear weapon policy decision making. ♦

# Using

The Treaty on the Prohibition of Nuclear Weapons explicitly prohibits the use, or threat of use of nuclear weapons as well as any assistance with those acts. This builds on the UN Charter, notably, Article II (4) that 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.*" Nuclear weapons are designed as massively explosive weapon, even the smallest yields can put thousands at risk of becoming indiscriminate casualties. There remains a long standing taboo on the use of nuclear weapons. The nuclear armed countries have engaged in a number of conflicts since the advent of the nuclear age, but have not yet crossed the threshold to nuclear weapon use. Until now, this taboo has not been codified in any way and the norm against use is being chipped away by increased threats and new nuclear weapon designs.

For those NATO members that do not possess their own nuclear weapons, there remain questions about how they can retain readiness to support the use of nuclear weapons (for example, by flying air support missions to provide protective cover for planes carrying nuclear bombs) and join the TPNW. It is likely that the political impact on NATO's non nuclear armed members would require a shift in current NATO nuclear policy. NATO's 2016 Warsaw Summit communique stated "*The circumstances in which NATO might have to use nuclear weapons are extremely remote*"<sup>viii</sup> which leans closer towards the use of nuclear weapons than other NATO documents have in a generation. Yet, the same document reflecting on the changed security environment, adopted "*a broad approach to deterrence and defence*" including measures that "*are defensive in nature, proportionate, consistent with our international commitments and demonstrate our respect for the rules-based European security architecture*".<sup>ix</sup>

NATO has a summit coming in July 2018, and given the strengthening of the global rules-based security architecture. NATO members should stop signalling any acceptability of using nuclear weapons, and publicly call on their alliance members to do the same. To create the conditions for nuclear disarmament, NATO must conduct a reassessment of its deterrence mix, and prepare for 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. ♦

# Conclusion

For the majority of countries in the world that don't have nuclear weapons, implementing the provisions of a the Treaty on the Prohibition of Nuclear Weapons is going to be fairly straightforward.

For NATO's non nuclear armed members, however, there will need to be an evaluation of the most strategic long term ways to protect the safety and security of the populations across the North Atlantic. As the 2016 Warsaw communique recognizes, NATO seeks to remain an *“unparalleled community of freedom, peace, security, and shared values, including individual liberty, human rights, democracy, and the rule of law.”* A focus on future defence planning, that remains law abiding and interoperable reinforces the flexible approach to security and defence necessary to meet these core obligations of the Alliance.

History has shown that when the rhetoric around nuclear weapons is most threatening, disarmament and arms control efforts are most successful. With a new addition to the global legal architecture on nuclear disarmament and non-proliferation now is the time to understand and prepare for the implications of the change in global attitudes towards nuclear weapons- like other weapons of mass destruction – they are deemed by the majority of nations as unacceptable.

NATO members are resolved to create the conditions for a nuclear weapons free world. Positive steps in that direction include reducing rhetoric that signals acceptability in any use of WMD, including nuclear weapons; redefining alliance burden sharing to avoid complicity in the use of prohibited weapons, and preparing to make policy changes and adjustments to bilateral paperwork between the US and NATO states participating in nuclear sharing.

To join the TPNW the implications would be greatest for the NATO members hosting US nuclear weapons, as they would have to participate in the physical removal of the weapons and the reassignment of infrastructure and some personnel. The most difficult to achieve would perhaps be to find the political capital within NATO to renegotiate alliance political documents. However, to meet the requirements of the commitment to reduce the role of nuclear weapons in security strategies and doctrines is something that NATO members will eventually generate anyway, the Treaty on the Prohibition of Nuclear Weapons simply adds an incentive. While not all members may be ready to take this step now, there is no doubt that it is a necessary one on the path to the nuclear weapons free world aspired by all. ♦

<sup>i</sup> 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document . Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=NPT/CONF.2010/50%20\(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20(VOL.I)).

<sup>ii</sup> Article I, Comprehensive nuclear Test Ban Treaty (1996)

<sup>iii</sup> Snyder, S. & van der Zeijden, W., Don't Bank on the Bomb | A Global Report on the Financing of Nuclear Weapons Producers. Available at: <http://www.dontbankonthebomb.com/> [Accessed September 2, 2014].

<sup>iv</sup> 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](http://www.nato.int/cps/en/natolive/official_texts_112964.htm) [Accessed September 11, 2014].

<sup>v</sup> Stein-Ivar Lothe Eide, A Ban on Nuclear Weapons: What's in it for NATO? ILPI Weapons of Mass Destruction Project. Available at: <http://nwp.ilpi.org/?p=2296> [Accessed October 3, 2014].

<sup>vi</sup> 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](http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_publications/20120214_strategic-concept-2010-eng.pdf)

<sup>vii</sup> NATO, "Deterrence and Defence Posture Review", 20 May 2012, paragraph 12, available: [https://www.nato.int/cps/en/natohq/official\\_texts\\_87597.htm](https://www.nato.int/cps/en/natohq/official_texts_87597.htm)

<sup>viii</sup> Warsaw Summit Communiqué, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw 8-9 July 2016, paragraph 54: [https://www.nato.int/cps/en/natohq/official\\_texts\\_133169.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/official_texts_133169.htm?selectedLocale=en)

<sup>ix</sup> Ibid, paragraph 38.



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