

Dealing with a ban.

Implications of a nuclear weapons ban treaty on NATO

Susi Snyder

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About the author

Susi Snyder is the Nuclear Disarmament Programme Manager for PAX. Previously, Susi served as the Secretary General of the Women's International League for Peace and Freedom, based at their International Secretariat in Geneva, Switzerland where she monitored various issues under the aegis of the United Nations, including sustainable development, human rights, and disarmament.

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.

More information

www.nonukes.nl

www.paxforpeace.nl

Contact

snyder@paxforpeace.nl

Introduction

In the last several years there has been a shift in the global nuclear weapons discourse back to the impact of the 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 and consider new legal instruments, including the possibility of a treaty outlawing nuclear weapons. This paper examines, from a NATO non nuclear armed member perspective, the potential impacts of the prohibitions that might be included in a nuclear weapons ban treaty. It takes 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. Broadly, this paper looks at what the non nuclear armed members of NATO would be responsible for legally and politically if making, getting, having and using nuclear weapons were explicitly illegal in a ban treaty.

The 2010 nuclear Non Proliferation Treaty 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.*"ⁱ This agreement spurred action to further examine the potential impact of any use of nuclear weapons through a series of intergovernmental conferences, hosted in Norway (2013), Mexico (2014) and Austria (2014).

The December 2014 Vienna Conference on the Humanitarian Consequences of Nuclear Weapons, attended by 158 states, reaffirmed the understanding that any nuclear weapon detonation, whether intentional or by accident, would cause unacceptable humanitarian consequences. An overwhelming majority of states expressed in their national statementsⁱⁱ their concern about this issue and their hope that the community of states will find ways to address the lack of progress on creating a world free of the fear of catastrophic consequences caused by nuclear weapons.

The Vienna Conference ended with a chair's summary identifying eight key areas of shared understanding in the humanitarian initiative and a pledge by the Austrian government "*to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons and [...] to cooperate with all stakeholders to achieve this goal*".ⁱⁱⁱ The Pledge has already drawn support from several dozens of countries^{iv} across the globe.

NATO members have also participated in this series of conferences, and all (except France) were in Vienna. Some NATO members have 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. Few NATO members have taken the humanitarian discussion to its logical conclusion- the urgent necessity to delegitimize and outlaw nuclear weapons. At the same time, nearly all NATO members have repeatedly called for negotiations on new legal instruments, such as a treaty on fissile materials, that would add to the global disarmament and non-proliferation legal framework. ♦

Making & Getting

There are a number of steps included in making or getting nuclear weapons such as development, producing, testing, acquisition and transfer. Most of these have already been prohibited by international legal agreements.

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"*.^v 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 a nuclear weapons ban.

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 financing and encouragement or inducement of these acts. 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.^{vi} 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, States could elaborate the time frames needed to implement this prohibition on financing as part of their national implementation legislation.

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. A treaty banning nuclear weapons could require that this questionable practice stop.

A nuclear weapons ban treaty could have an impact on the infrastructure necessary to maintain forward deployment capacities. It could require the return of the current 180 or so forward deployed B61 nuclear bombs to the US as a practical implication. There could also be the physical dismantlement of existing bunkers capable of storing nuclear weapons, and the trainings that some air forces undergo to handle nuclear weapons would cease. In some situations, additional bilateral negotiations might need to be undertaken 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 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.

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 at the 2010 NPT Review Conference 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.*"^{vii} 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. A ban treaty would also bring greater international attention to and pressure on NATO nuclear sharing practices as contradicting norms on nuclear weapons. A ban treaty also 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.

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.*"^{viii} 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. ♦

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. Upon achievement of a nuclear weapons ban treaty, most non nuclear NATO members will have no new obligations or responsibilities on this. Primarily these articles 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. 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, 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 is a question that would likely be left up to each state to decide on their own.

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 NATO non nuclear armed 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. 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, and in command, control and consultation arrangements"*^{ix}. Nevertheless, the Strategic Concept is formulated carefully so it does not block changes in the NATO nuclear posture. In theory, the text would allow a nuclear weapon free NATO without contradicting the non-binding political agreement. ♦

Using

In a new legal instrument on nuclear weapons it would be important to explicitly prohibit the use, or threat of use of nuclear weapons as well as any assistance with those acts. The actual use, or threat of use would constitute a significant breach of obligations as a member of the United Nations. 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 and global through a new legal instrument. While some Nuclear Weapons Free Zone Agreements already include provisions against the use of nuclear weapons on members of the zone, these are subject to reservations and conditions. Explicitly outlawing the use or threat of use would be consistent with the development of the global legal humanitarian disarmament regime and codify the nearly 70 year practice of non-use.

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.*"^x, which was reiterated at the most recent summit in Wales. NATO would need to 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. ♦

Conclusion

For the majority of countries in the world that don't have nuclear weapons, implementing the provisions of a new legal instrument that would prohibit its parties, their nationals, and any other individual subject to its jurisdiction from engaging in the development, production, testing, acquisition, possession, stockpiling, transfer, deployment, threat of use, or use of nuclear weapons, as well as assistance, financing, encouragement, or inducement of these prohibited acts would be fairly straightforward.

For NATO's non nuclear armed members there would be some implications, however most require little more than a declaratory change in policy and some adjustments to the bilateral paperwork between the US and NATO states participating in nuclear sharing. The implications would be biggest for the five 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 the NATO Strategic Concept 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 have to generate anyway, a treaty banning nuclear weapons simply adds an incentive. Overall, meeting the requirements to join a new legal instrument prohibiting nuclear weapons would be a significant step towards fulfilling NPT obligations and strengthening the global disarmament and non-proliferation regime. ♦

ⁱ 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)).

ⁱⁱ All statements from the Conference can be found on the website of the Austrian Ministry of Foreign Affairs, <http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/statements/>

ⁱⁱⁱ Austrian Pledge 2014 . Available at: http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abrüstung/HINW14/HINW14_Austrian_Pledge.pdf.

^{iv} For an up to date list see: <http://www.icanw.org/pledge/>

^v Article I, Comprehensive nuclear Test Ban Treaty (1996)

^{vi} 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].

^{vii} 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].

^{viii} 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].

^{ix} 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

^x 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



www.paxforpeace.nl

Godebaldkwartier 74

3511 DZ Utrecht

The Netherlands

www.paxforpeace.nl

info@paxforpeace.nl

+31 (0)30 233 33 46

P.O. Box 19318

3501 DH Utrecht

The Netherlands