

First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons

Distr.: General
10 June 2022

English only

Vienna, 21–23 June 2022

The role of non-nuclear weapon states in NATO on nuclear disarmament.

Working paper submitted by ICAN on behalf of the Flemish Peace Institute

I. Context

1. The United Nations (UN) was founded in 1945 to safeguard future generations from war. The Charter affirms that countries have the right to individual and collective self-defense but emphasizes that countries must try to resolve their conflicts by peaceful means. The UN Charter further stipulates that countries must take collective action to prevent and remove threats to peace.¹ The ultimate goal is a world in which weapons, and certainly weapons that do not discriminate between victims, are not used to settle conflicts. In its 1996 advisory opinion, the International Court of Justice ruled that: "*there exists an obligation to pursue in good faith hand bring to a conclusion, negotiations leading to nuclear disarmament in all its aspects under strict and effective international control*". Nuclear disarmament should in other words be a guiding principle of states' actions, as is also foreseen in the Non-Proliferation Treaty (NPT). Yet, the steady decrease in the total number of nuclear weapons in the world that can be observed since the 1980s, has slowed down the last couple of years. Moreover, nuclear-weapon states began developing new nuclear weapons and modernizing their delivery systems.

2. Across the globe a feeling exists that within the framework of the NPT, the nuclear weapon states are not prepared to fulfil their part of the agreement - nuclear disarmament in exchange for non-proliferation by the non-nuclear weapons states. In recent years, the existing process towards further nuclear disarmament has come under pressure and the drastic reduction in the number of nuclear weapons (after the end of the Cold War) has been halted. As a reaction to this development, a countermovement has developed with the Treaty on the Prohibition of Nuclear Weapons (TPNW), adopted in July 2017, as the most direct expression of a renewed global mobilization for nuclear disarmament. This treaty is the first multilateral treaty to declare the possession or the (threat of) use of nuclear weapons illegal under international law.

¹ Charter of the United Nations (1945), <https://www.un.org/en/about-us/un-charter>

3. The current international context feeds a sense of urgency for defining strategic reactions and orientations by each of the actors of the international security scene. This context is particularly difficult for a specific group of countries: those countries who do not possess nuclear weapons but are part of a nuclear alliance (and in some cases even host nuclear weapons from an allied nuclear weapon state on their territory). These states, more in particular the non-nuclear weapon states that are members of NATO (a self-declared nuclear alliance), all stress the NPT as the cornerstone of nuclear disarmament and have voted against the TPNW in the subsequent meetings of the UN. Nevertheless, these states can take various actions and initiatives with which to contribute constructively to the goal of a world without nuclear weapons.

II. Taking nuclear disarmament forward: acting as bridge builders

4. In this working paper, the Flemish Peace Institute, an independent peace research institute affiliated to the Flemish parliament (Belgium), aims to forward concrete recommendations and initiatives non-nuclear weapon states that are part of a nuclear alliance could take to actively pursue a nuclear disarmament agenda. This working paper follows from an in-depth study of the possible actions Belgium could take in advocating nuclear disarmament.² Belgium's position in this respect is both specific and difficult. Although being a non-nuclear weapon state, Belgium is, as a member state of NATO, part of a nuclear alliance and, moreover, allegedly hosts nuclear weapons on its territory, although the Belgian government to this date has never neither confirmed nor denied their presence.³ Like most other NATO members, Belgium did not participate in the negotiations preceding the TPNW and did not sign this treaty.

5. In its recent study on steps towards nuclear disarmament, the Flemish Peace Institute, identified prospective views on the possible enhancement of the existing instruments. In this analysis, the legal, economic, political, strategical and societal dimensions linked to the reality of being a non-nuclear weapon state in a nuclear alliance were identified. Despite the focus of the study was on the Belgian context, we believe that its conclusions and the concrete actions that were identified are also relevant for other states in a similar position.

6. From the economic perspective, all non-nuclear weapon states comply with the related international obligations. The current legal obligations in this field mainly relate to export controls and measures related to the proliferation financing, which, however, do not prevent in any way economic actors from performing business with entities involved in nuclear weapon programmes. Even without specific legal obligations, companies and investors in several states are susceptible to the principles of the TPNW. Some examples are the actions taken by the Dutch pension fund ABP and the central bank of Norway excluding manufacturers of nuclear weapons from their investments.⁴ Various Belgian financial institutions equally have adapted their

² The full version of this report can be consulted via https://vlaamsvredesinstituut.eu/wp-content/uploads/2022/04/20220125_Nuclear_Disarmament-EN-FlemishPeaceInstitute-WEB.pdf

³ It is believed that about twenty B-61 tactical nuclear weapons are deployed at the Belgian Kleine Brogel Air Base, home of Belgium's F-16 and future F-35 dual capable fighter aircraft fleet.

⁴ Dr P. Wynn-Pope, B. Lincoln, N. Suhadolnik, J. Allan, The UN Treaty on the Prohibition of Nuclear Weapons: implications for companies and institutional investors (22 January 2021), <https://corrs.com.au/insights/the-un-treaty-on-the-prohibition-of-nuclear-weapons-implications-for-companies-and-institutional-investors>

policies and aligning to TPNW's obligations, even without Belgium being a state party to it. In other words, the economic impact for non-nuclear weapon states in a nuclear alliance does not appear to be substantial.

7. From the strategic perspective, non-nuclear NATO member states have national defence policies which are aligned with the obligations and principles originating from NATO's commitment. The latter is based on the North Atlantic Treaty which, in regard to nuclear weapons establishes no other legal commitments than maintaining and developing the individual and collective capacity to resist armed attack. However, NATO makes nuclear deterrence a core element of its overall strategy, which is regularly confirmed by the strategic doctrine documents. In its "Analysis and Recommendations", the reflection group appointed by NATO's Secretary-General in the framework of the "Forward-looking Reflection Process", recommended that "*Allies also should recall their position on the Treaty on the Prohibition of Nuclear Weapons, namely that it will never contribute to practical disarmament, nor will it affect international law*".⁵ The commitments undertaken with NATO remain political ones. Nonetheless, the fact that several NATO-members, such as Belgium, Germany and the Netherlands, are said to host American nuclear weapons on their territory is a factor to take into due account. Therefore, future developments at the international, national, and regional level *vis-à-vis* nuclear non-proliferation and disarmament cannot ignore this important strategic dimension. The Alliance reconfirmed at the 2018 Brussels Summit its long-standing commitment to nuclear deterrence, stating that "as long as nuclear weapons exist, NATO will remain a nuclear alliance".⁶ However, NATO does not exclude diverging views on nuclear weapons within the alliance.

8. Equally important are the aspects related to societal needs and aspirations. Depending on the form of government as well as on its political configuration, a state will also take actions on the basis of public opinion. A recent poll, conducted in late 2020 in six NATO countries - Belgium, Denmark, Iceland, Italy, the Netherlands, and Spain - show a high level of public support for their countries to join the TPNW.⁷ As a consequence, a widely shared support exists among the populace in several NATO non-nuclear weapon states for their governments to join the TPNW.

9. Finally, legal aspects are crucial in assessing and deciding what room a state may have for leveraging its policy. In this respect, several recent studies concluded that the TPNW and the NPT are not legally incompatible.⁸ As a consequence, signing and ratifying both international instruments would not be legally impossible. For non-nuclear weapon states in a nuclear alliance, the main element in the TPNW that could be problematic is in reference to the possession and storage of nuclear weapons, because of hosting American nuclear weapons on the territory of several of these states. In particular, it is the prohibition of storage which would contradict the most the current status of these states acting as a hosting country of United States' nuclear weapons in the context of NATO. Although "hosting" may be meant as referring to states that have never produced NW and not possessing their own arsenals -thus

⁵ NATO (2020), NATO 2030 : *United for a New Era, Analysis and Recommendations of the Reflection Group Appointed by the NATO Secretary General*, p.37, https://www.nato.int/nato_static_fl2014/assets/pdf/2020/12/pdf/201201-Reflection-Group-Final-Report-Uni.pdf

⁶ NATO (2021), *NATO's nuclear deterrence policy and forces*, https://www.nato.int/cps/en/natohq/topics_50068.htm

⁷ ICAN (2021), *NATO Public Opinion on nuclear weapons*.

⁸ Oireachtas Library and Research Service, Hurley, D. (2019), *The Treaty on the Prohibition of nuclear weapons*, L&RS Note; The Research Services of the German Bundestag (2021), *On the legal relationship between the Treaty on the Prohibition of nuclear weapons and the Non-Proliferation Treaty*.

complying with the prohibition of production and use - it is not possible to mean it as not referring to the presence - *e.g.* stationing, installation, deployment - of nuclear weapons on the territory. In this respect, especially the non-nuclear weapon states within NATO that host nuclear weapons are found in factual and substantial incompatibility with the prohibition of storage of nuclear weapons as per the TPNW.

10. To summarize, in determining the possible actions of states with regard to nuclear disarmament, legal, strategic, societal and economic considerations need to be taken into account. While our analysis suggests that a short-term accession of non-nuclear weapon states in a nuclear alliance to the TPNW would be politically and practically unfeasible, it at the same time opens possible lines of action these states could take. Non-nuclear states in a nuclear military alliance are in a unique position to act as bridgebuilders between the different perspectives in a credible manner. The following section will forward concrete steps such states can undertake to actively work towards further nuclear disarmament and, eventually a nuclear-free world.

III. Concrete steps towards nuclear disarmament: ideas for non-nuclear weapon states in a nuclear alliance

11. In developing these concrete actions, the Flemish Peace Institute points out some important principles that guide the identification of these actions, taking the conclusions of the analysis described above as a starting point:

- As recent studies demonstrated, the NPT and the TPNW are not necessarily incompatible from a legal perspective and can therefore complement each other.
- Non-nuclear states in a nuclear alliance must use their unique position to play a more active role as a bridge builder within the various international forums - NPT, NATO, TPNW, EU - that are currently relevant to nuclear disarmament.
- Initiatives on nuclear disarmament should preferably be taken in consultation and coordination with like-minded countries. Multilateral action is, in other words, the most preferable and feasible option for these states
- A step-by-step approach should be developed, which would combine the possibility to take concrete actions in the short term, with a view to achieving the long-term goal of nuclear disarmament
-

12. On the short term, non-nuclear weapons states that are NATO members can take various initiatives to be **transparent** about the presence of nuclear weapons on their territory. This transparency is crucial in order to have a mature social and political debate about the presence of these weapons at the national and international level. It will also increase confidence between the various actors on the international level.

13. Another important step non-nuclear weapon states in a nuclear alliance can take in the short-term builders is to **participate as an observer in the Meetings of State Parties to the TPNW**. This way these states can act as bridge-builders between state parties to the Treaty and non-parties to it.

14. More in general, non-nuclear weapon states in a nuclear alliance could **take up an active role as bridge builder within the relevant international forums** - such as the NPT, TPNW, NATO and the EU - between the nuclear and non-nuclear weapon states. Reducing the existing international polarization, increasing international trust between nuclear weapons states and non-nuclear weapons states and between nuclear weapons states, and reducing the risks of nuclear weapons deployment must be the objectives.

- **Within the framework of the NPT to:**
 - take a constructive stance on the TPNW and make this concrete in its voting behaviour;
 - at the forthcoming NPT Review Conference in August 2022, call for an end to the modernization of nuclear weapons;
 - take an active role in existing initiatives within the framework of the NPT, such as the dissemination and development of risk reduction measures and negotiations on the Fissile Material Cut-off Treaty;
 - advocate a "No first-use" policy.
- **Within NATO** regarding the use of nuclear weapons:
 - actively advocate the inclusion of a no-first-use policy in NATO's nuclear doctrine
 - actively advocate a reduction of the importance of nuclear weapons in the NATO Joint Strategy within all relevant forums, such as the Parliamentary Assembly, the North Atlantic Council and the Nuclear Planning Group
- **At EU level** seek for points of dialogue with a view to a unified EU position on nuclear disarmament and to this end:
 - work with like-minded countries towards a more nuanced position on the TPNW and to reach a common European position. The identification of points on which there is already consensus and of aspects that deserve further elaboration can be helpful in this;
 - actively cooperate in the development of concrete measures to reduce the risks posed by nuclear weapons.

15. Non-nuclear weapon states on whose territory tactical nuclear weapons are stored, so-called 'host nations', are encouraged to work on a joint initiative to reach an agreement with the United States on the withdrawal of these weapons from Europe. If this does not lead to a joint agreement, host nations should remove, in consultation with the US, the nuclear weapons from their territory. The modalities of their withdrawal should also be taken in consultation with the US.

16. Lastly, non-nuclear weapon states in a nuclear alliance could provide active support for existing initiatives relating to the **verification of nuclear disarmament programmes**, such as joining the International Partnership for Nuclear Disarmament Verification.

IV. Concluding remarks

17. Despite the continued existence of – at least in official discourse – a consensus that global nuclear disarmament remains an important goal, the question whether the TPNW might have been counterproductive and has actually enhanced the polarization in the nuclear disarmament process between the nuclear weapon states – together with their allies - and the non-nuclear weapon states, is omnipresent. In this paper we argued, based on an in-depth analysis of the various dimensions of political decision-making that a specific group of countries – i.e. non-nuclear weapon states in a nuclear alliance – may be well placed to act as bridgebuilders between both 'poles' in the current discussions on nuclear disarmament.

18. Several concrete lines of action have been forwarded in this paper that these states could undertake in this regard. Given the complex geopolitical situation and current security challenges, a step-by-step approach in a multilateral manner, was the guiding principle in identifying the concrete initiatives non-nuclear weapon states in a nuclear alliance could take. These states may be forerunners in taking concrete steps in a concerted manner that could effectively contribute to further nuclear disarmament by building in the short term the necessary conditions for the international community to be susceptible for a further reduction of the presence and potential use of nuclear weapons. Eventually and on the long term, this process could then result in the abolishment of nuclear weapons across the globe.
