



NATO’s opposition to the treaty banning nuclear weapons: Or why the Netherlands attempted to plug the nuclear deterrence dyke by voting against the treaty

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The Netherlands has a long and distinguished history as a leading progressive force in promoting the rule of law, disarmament, the peaceful settlement of disputes and sustainable development. It is the capital of the international justice system, hosting the International Court of Justice and the International Criminal Court and its special tribunal. So how did the Netherlands end up being on the wrong side of history at the recent nuclear weapons ban treaty negotiations and the only country present to vote against it?

On the 7 July 2017, more than 70 years after the dropping of the atomic bombs on Japan, [a global treaty to ban nuclear weapons](#) was adopted at the United Nations headquarters in New York. It is hoped that the 10-page treaty prohibiting nuclear weapons will also provide a framework leading to their eventual elimination. The treaty was endorsed by [122 countries](#) and will be open for signature by any UN member state on 20 September during the annual UN General Assembly. 50-state

ratifications are needed for the treaty to enter into international law.

The UN General Assembly adopted a [resolution](#) in December 2016 to start negotiations the following year on a treaty to prohibit nuclear weapons, leading to their elimination. The [negotiations](#) began for one week in March 2017, resumed on the 15 June and concluded on the 7 July, with the participation of governments, international organizations and civil society. However, countries that possess nuclear weapons and many others that either keep the possibility of their use in security strategies or doctrines or host weapons on their soil, with one exception, [boycotted the negotiations](#). The one exception was the Netherlands, which despite having US nuclear weapons on its territory, did

take part in the negotiations. But as discussed below, it did not play a constructive role at the end by being the only participating country to vote against the treaty.

(Photo credit: Flickr/ICAN)



Background to the treaty negotiations

Building on several years of international discussions on the humanitarian impact of nuclear weapons, support for a ban treaty grew steadily over months of negotiations. However, it has no backing from eight of the nine nuclear-armed states—the five official nuclear weapon states (NWS) under the 1968 nuclear Non-Proliferation Treaty (NPT): the United States, Russia, China, UK and France; and the other acknowledged nuclear-armed states: India, Pakistan and Israel—and their 30 or so, mainly NATO allies. (The ninth nuclear-armed state, North Korea, did support the UN General Assembly resolution; China, India and Pakistan abstained, and the other five voted against). Since three of those NWS (the United States, UK and France) are NATO member states, the opposition to the treaty runs deep with the alliance—although it was NATO member, Norway, that [hosted in 2013 the first ever conference addressing the humanitarian impact of nuclear weapons](#). All NATO states, except the nuclear-armed, joined the humanitarian impact conferences, and even the United States and UK joined [the final one in Vienna](#) in December 2014.

However, enthusiasm within NATO cooled after the humanitarian impact discussions and by the time of the debates in the UN General Assembly First Committee in October 2016, the United States was [circulating a memo](#) warning other NATO members that efforts to negotiate a treaty prohibiting nuclear weapons or to delegitimise nuclear deterrence “are fundamentally at odds with NATO’s basic policies on deterrence”. In the [memo](#), the US Government strongly urges allies and partners to vote no to the resolution, and “not to merely abstain” and goes on to argue that “if negotiations do commence, we ask allies and partners to refrain from joining them”.

[Reasons for the scepticism](#) among NATO states include doubts that a ban

would equate to abolition and the threat they claim it poses to the NPT. Undoubtedly, however, it is the challenge a ban poses to Western reliance on inhumane and indiscriminate weapons that is the core reason for opposition. As [Michael Rühle of NATO’s Emerging Security Challenges Division](#) puts it, “Western nuclear deterrence policies will be de-legitimised; the nuclear policies of non-Western countries will remain unhampered”. He argues that it is [extended deterrence](#) and NATO’s nuclear sharing arrangements that are the more immediate targets of the ban rather than the eradication of, say, North Korea’s nuclear arsenal. So, is the professed universalism of the new ban treaty a thinly veiled assault on Western policies as Rühle argues? Or are those policies themselves part of a core dynamic that perpetuates the continuing salience of nuclear weapons and thereby undermines the NPT?

Extended deterrence and nuclear sharing in NATO

Because of notions of extended deterrence, the nominally non-nuclear weapon states (NNWS) in NATO have often been accused of seeking to straddle the fence of supporting both nuclear deterrence and nuclear disarmament. However, five of those states—Belgium, Germany, Italy, the Netherlands and Turkey—clearly fall on the side of actively promoting nuclear deterrence because of their participation in a longstanding nuclear sharing arrangement within NATO. Under this arrangement, the United States currently stations an estimated 180 nuclear warheads ([specifically air-delivered gravity bombs](#)) in the territory of those five states, which (except for Turkey) are responsible for delivering the weapons in the event of their hypothetical use.



(Nuclear assets: photo credit: NATO)

Chemical and biological weapons have been banned by most states, but are widely seen as providing little military advantage. In contrast, devaluing and delegitimizing nuclear weapons is an

incongruous concept to a nuclear-centric alliance like NATO. NATO's 1999 Strategic Concept relied on nuclear weapons as the "essential political and military link" (binding together North America and Europe), and the [2010 NATO Strategic Concept](#) stated that nuclear weapons are "a core component of NATO's overall capabilities for deterrence and defence... and that as long as nuclear weapons exist NATO will remain a nuclear alliance". In 2013, the UN High Representative for Disarmament Affairs [challenged NATO at its annual conference on disarmament and non-proliferation](#) to consider adopting a strategic concept on nuclear disarmament and to pursue it not just as a noble goal for some distant era but as a "guiding star". Indeed, the refusal of the NWS and their allies to pursue relevant effective nuclear disarmament measures in good faith was an additional justification for nuclear ban negotiations in addition to the humanitarian impact of the weapons.

NATO's [Deterrence and Defence Posture Review](#) (DDPR), adopted at the 2012 summit in Chicago, suggests the possibility of reductions in these weapons given "reciprocal steps by Russia", as if the current levels are essential to force negotiations. No further details or criteria were indicated in the DDPR, although NATO members reportedly agreed to task appropriate committees to study what the reciprocal steps might be. With an estimated 2,000 non-strategic warheads that according to official Russian statements are currently retained in central storage facilities, Russia has been reluctant to discuss such mutual reductions, especially since it regards the weapons as balancing NATO's conventional superiority.

Given this impasse, some anti-nuclear campaigners have [argued](#) that NATO's aircraft deployed to deliver nuclear bombs in Europe are a problematic burden best eliminated, even if on a unilateral basis. They suggest that there are other more relevant ways for allies to demonstrate a contribution to collective defence—for example, by taking practical steps to increase conventional security—and other more effective means of engaging Russia in talks on their tactical nuclear weapons. This burden includes [safety and security risks](#) of US nuclear

weapons stored in Europe, and especially those located at the Incirlik airbase in Turkey.

Germany recently [withdrew its troops](#) from the airbase (over disputed visiting access rights for German parliamentarians, among other things) but the estimated 50 US nuclear weapons remain. There have been [calls](#) for their removal given the base's location only 68 miles from the Syrian border and the failed coup attempt in Turkey in 2016, when the United States [temporarily lost access](#) to Incirlik. Senior Turkish officers in charge of the base were said to be among the [leaders of the coup](#) and the base was also subsequently [besieged by anti-US protesters](#) who demanded its closure. Even if NATO leaders believe the United States should keep tactical nuclear weapons in Europe, given the security risks of basing US nuclear weapons in Turkey, there is a compelling case for the removal of those particular weapons to the United States.

Others suggest more pragmatic ways to break the NATO-Russian tactical nuclear weapons impasse. Pavel Podvig and Javier Serrat, for example, recently [proposed a 'zero deployment' arrangement](#), whereby all tactical nuclear weapons would remain non-deployed during peacetime, codifying current practices into a legally-binding, verifiable arrangement. However, rather than looking for creative ways to reduce the salience of nuclear weapons in NATO, the official wind is blowing in the opposite direction with [new proposals](#) for re-evaluating and legitimizing their role within the alliance, and committing all alliance members to a heightened state of readiness.

In February, Jaroslaw Kaczynski, the leader of Poland's ruling Law and Justice party, [floated the idea](#) of the EU as a 'nuclear superpower', while several German analysts have [called for a German bomb](#). Wiser voices in Germany [continue to make the case as to why Germany should not go nuclear](#), not least because "nuclear weapons cannot deter the kind of limited wars Russia has waged so successfully in Crimea and eastern Ukraine, whoever provides the deterrent". The German people seem to agree, with 93 per cent in favour of an international ban on nuclear weapons in a [March 2016 poll](#), and 85 per cent supporting the removal of all US nuclear weapons from Germany. Nonetheless, while discussions on

the nuclear ban treaty were ongoing in New York, [a review commissioned by the German parliament](#) determined that “the country could legally finance the British or French nuclear weapons programmes in exchange for their protection”. Indeed, several German financial institutions already do this by [investing in companies providing key components](#) for these arsenals. Advocates of the nuclear ban treaty argue, however, that implementing such a proposal has now become even more difficult since it would run counter to international law, irrespective of whether the states concerned are party to the treaty.

Under the new treaty, signatory states must agree not to develop, test, manufacture or possess nuclear weapons, use or threaten to use them, or allow any nuclear arms to be stationed on their territory. To become a signatory, therefore, a NATO member state will have to end all nuclear weapons responsibilities in the alliance, or the alliance will have to dramatically change its nature and drop nuclear deterrence as part of its strategy. It is therefore no surprise that NATO states opposed it—although it should be noted that there are already significant divergences in nuclear weapons policies across the alliance: from Lithuania’s constitution forbidding deployment, to Norway’s executive orders not to allow nuclear-armed ships to dock in their ports. In addition, France has never been an official part of NATO’s nuclear ‘burden sharing’ activities. Nonetheless, in seeking to universalize the new nuclear ban treaty, the growing polarization between nuclear-armed states and NNWS will need to be overcome, since the treaty will have little immediate practical effect without the participation of the former.

However, in the same way that previous UN treaties have been effective even when key nations have failed to sign up to them, the nuclear ban treaty is likely to increase the political and diplomatic pressure on nuclear-armed states to pursue nuclear disarmament more positively. For example, the United States did not sign up to the landmines treaty, but has completely aligned its landmines policy to comply with the treaty. Within the nuclear field, changes in behaviour of nuclear-armed states is unlikely to occur overnight, but the status quo has certainly been altered.

The Netherlands and the ghost of NATO at the treaty negotiations

On the opening day of the second stage of the nuclear weapon ban treaty conference on the 15 June, the only NATO member state present, the Netherlands—and the only country participating in the negotiations with an official position supporting nuclear weapons—unsurprisingly played the NATO nuclear sharing card. In general remarks (as paraphrased in reporting by the NGO, Reaching Critical Will), the [Netherlands said](#) that the draft treaty contained items that are incompatible with its NATO obligations. It also said it could not sign anything that is incompatible with NATO obligations, undermines the NPT or lacks strong verification.

The Netherlands was the only NATO state not to vote against the resolution establishing negotiations on the treaty. This was a result of significant public and domestic political pressure. In a [letter](#) from Dutch Foreign Minister Koenders to the Parliament ([27 October 2016, DVB/NW-709/16](#)), the minister explained that the Netherlands would substantively take part in international discussions on a treaty for a ban on nuclear weapons without anticipating on a judgement on the end result, thereby implementing the parliamentary motion-Sjoerdsma (April 23, 2015, [document 33 783, no 19](#)).

While NATO’s nuclear sharing arrangement was originally [crafted in 1968 to be in conformity with the NPT](#), it certainly runs counter to the spirit of that treaty. And as Tariq Rauf argues in a [recent SIPRI Working Paper](#), it challenges common sense that a clear majority of around 150 NNWS docilely continue to accept this argument in perpetuity. He suggested that the NNWS could change this situation in the build-up to the 2020 NPT Review Conference by reaching a determination that stationed nuclear weapons within a NNWS are contrary to the purpose and objectives of the NPT and call for the removal of all such nuclear weapons. This is effectively what the ban treaty also proposes.

The [first draft of the treaty](#) discussed in New York prohibited nuclear-armed states and their active

nuclear deterrence allies from joining. Under article 4, (the so-called ‘destroy and join’ clause), the nuclear-armed states and their allies would first be required to eliminate their nuclear weapons before joining the treaty. The draft article 5 permitted nuclear-armed states and their allies to engage in negotiations with ban treaty states parties on the exact process of elimination. During [discussion of these clauses on the 19 June](#), however, some states argued that the treaty should be open to all states to join, effectively proposing a ‘join and destroy’ approach to the treaty. Under a South African proposal, for example, any state would be permitted to join the treaty after submitting a declaration about the status of its nuclear weapon possession and other relevant activities. That state would also commit to ceasing all nuclear weapon-related activities—possession and stationing of nuclear weapons, and any planning, training or military preparations for their use—within an agreed timeframe as set out in the treaty (at that stage, yet to be decided). Other states supported the idea of retaining two distinct pathways to disarmament in the treaty, while some preferred none.

A [revised draft treaty](#) was released by the drafting team on the 30 June and a notable change was the switch to a ‘join and destroy’ approach in article 4. During the open [plenary debate that day](#), several states expressed concerns about inconsistent terminology in the revised article. Although most of the initial reaction from delegations was positive, it was also widely acknowledged that more work and clarification was required on the process and rules of procedure for agreeing to a time-bound elimination plan for nuclear-armed states wishing

to join the treaty. A key issue for further discussion was whether the elimination provisions should be set out in detail within the treaty or be developed later. As drafted, however, nuclear-armed states parties could join the treaty and needed only to agree to “destroy as soon as possible” their nuclear weapons and to present a plan for their elimination.

In the discussions on article 19, the draft treaty’s relations with other agreements, the Netherlands again set out its wider reservations. As [recorded by Reaching Critical Will](#), these included calling for stronger language in the article to subordinate the ban treaty to the NPT (as well as the addition of a new paragraph to recognize that the treaty is a step towards fulfilling article VI of the NPT) and concerns about the lack of clarity as to how the new treaty would engage with nuclear-armed states.

On the 3 July, [a new draft of the treaty](#) was released following two days of closed consultations amongst negotiating states. The article 4 provisions were more comprehensive and included key improvements to the two separate pathways for nuclear-armed states to join the treaty. Under article 4(1) states can eliminate their nuclear weapon programmes and then join the treaty. This ‘destroy and join’ option also now included a stronger verification component, requiring the state to “cooperate with the competent international authority designated pursuant to paragraph 6 of this Article for the purpose of verifying the irreversible elimination of its nuclear weapons programme”.

(Moment of adoption of the ban treaty – 7 July 2017; photo credit: Flickr/ICAN)



Articles 4(2) and 4(3) set out the details of the 'join and destroy' option. An important revision is that now states using this option are required to "immediately" remove nuclear weapons or nuclear explosive devices from operational status and destroy them, "as soon as possible but not later than a deadline to be determined by the next Meeting of States Parties". The remainder of the paragraph was untouched and continued to require the submission of a legally-binding, time-bound plan for the verified and irreversible elimination of nuclear weapon programmes within 60 days of the treaty entering into force for that particular state. Then the plan must be negotiated with the paragraph 6 authority and later approved by other states parties. As with the 'destroy and join' option, any state choosing 'join-and-destroy' must also conclude an IAEA safeguards agreement to verify their nuclear material and undergo verification of the elimination of their programmes and facilities.

In addition, both options are also covered by article 4(6), which specifies that a competent international authority will be designated to verify the elimination of nuclear weapon programmes and facilities. The boundaries of this "international authority" were significantly expanded in the updated draft, including allowing more than one authority to be involved in the negotiation of a verification plan with the concerned state. Article 4(4) provides for states joining the treaty that have nuclear weapons belonging to other states stationed on their territories. Such states must propose the "prompt removal" of such weapons "within a timeframe ... to be ... approved by the next Meeting of States Parties or Review Conference". There are no verification requirements associated with this sub-clause.

During a plenary session to hear feedback from facilitated working groups on various parts of this latest draft treaty text, it was [reported that the Netherlands again said](#) that its proposals and concerns were insufficiently addressed. It reiterated concerns about the treaty's need for a subordinate relationship to the NPT, verification issues, and its compatibility with the Netherlands' obligations as a NATO member state.

On 5 July, [Netherlands repeated](#) for the record that it did not support the preamble and made a

general reservation on the entire text. The Netherlands also registered continued concern with the lack of definitions on the prohibitions and reiterated that the treaty was unlikely to be compatible with its NATO commitments. It said that article 4(3) ought to have a higher verification standard and article 4(4), while an improvement, would be better as a short and flexible article, in order to avoid prescribing future situations that cannot be predicted. Finally, rather than complementing and reinforcing the NPT, the Netherlands considered that the language of article 18 created "parallel machinery". In contrast, Austria (among several other states speaking after the vote) said that the new treaty does complement the existing disarmament architecture and strengthens the NPT.

The Netherlands kept up its opposition to the very end. [On the 7 July](#) the conference began to consider adoption of the draft treaty by consensus. However, the Netherlands formally objected to the adoption of the treaty, and requested a formal recorded vote. The result was a vote of 122 'for'; 1 'against' (Netherlands); and 1 'abstention' (Singapore). In an official explanation of its vote, [the Netherlands again explained](#) that article 1 is contrary to its commitments under NATO, it considered that the treaty undermines the NPT and has inadequate verification provisions. It nonetheless agreed to work to bridge the gap between treaty supporters and non-supporters.

Interestingly, a key NATO partner country, Sweden, voted for the treaty, but also expressed some reservations in the closing discussion. [According to the account by Reaching Critical Will](#), Sweden considered that the treaty will strengthen the norm against possession and use and it reaffirms the fundamental importance of the humanitarian perspective. However, Sweden also expressed concerns about how the treaty's relationship to the NPT and the treatment of verification. It will be particularly interesting to follow Sweden's future participation in the treaty, since if Sweden does decide to sign the treaty it de facto rules out any future participation in NATO nuclear planning and use of nuclear weapons, but not NATO membership per se. The treaty does not contain a specific interoperability clause, but several states made it clear during

negotiations that they do not see it prohibiting any type of military cooperation if that cooperation does not involve prohibited weapons.

Conclusions

The treaty agreed in New York establishes normative and legal commitments and practices to prohibit nuclear weapons. Achieving the goal of a treaty that is open to all states, including those that are nuclear-armed and the nuclear-supportive NATO member states, while preventing those same states from joining and maintaining nuclear weapons or nuclear deterrence policies required careful crafting. The final treaty may not be perfect, but it is an instrument that has the potential to be used to challenge the concept, policies, and practices of nuclear deterrence and the very existence of nuclear weapons.



(Photo credit: Flickr)

The treaty appears to be flexible enough to adapt to future changes so that nuclear-armed states have the flexibility to adapt its principles to their unique needs. However, it will require the nuclear-armed states and the NATO member states themselves to follow through on their commitments to pursue nuclear disarmament in good faith. Rather than seeing a treaty that is ‘incompatible with NATO obligations’, perhaps the starting point ought to be to re-evaluate those alliance obligations that are incompatible with the treaty.

Fresh thinking on this issue within NATO seems unlikely in the short-term, however. In a [joint press statement](#) released shortly after negotiations on the treaty had been concluded, the three NATO NWS—France, the UK and USA—declared their intention to never join the treaty and nor will they accept any claim that the treaty could become customary international law. The

ban treaty is also criticised for being incompatible with nuclear deterrence, which the three states credit with keeping the peace in Europe and North Asia for over 70 years.

But the holes in the edifice of nuclear deterrence are only likely to grow in the decades ahead and the new ban treaty adds further weight to the call for a reimagining of deterrence for the more complex contemporary environment in which NATO finds itself.

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