

June 2019

The Netherlands and the UN Treaty on the Prohibition of Nuclear Weapons

Background

1. On 7 July 2017, 122 nations voted to adopt a landmark global agreement to outlaw nuclear weapons, known as the UN Treaty on the Prohibition of Nuclear Weapons (TPNW). It opened for signature on 20 September 2017 and will enter into legal force once 50 nations have ratified or acceded to it. Pending the treaty's entry into force, nuclear weapons remain the only weapons of mass destruction not subject to an explicit global ban. Thus the new agreement will fill a major gap in international law.
2. The TPNW prohibits states from developing, testing, producing, transferring, possessing, hosting, using or threatening to use nuclear weapons. It also prohibits them from assisting, encouraging, or inducing anyone to engage in any of these activities. A state with nuclear weapons may join the treaty, so long as it agrees to destroy them in accordance with a legally binding, time-bound plan. Similarly, a state that hosts another state's nuclear weapons on its territory may join, so long as it agrees to remove them by a deadline.
3. The recently-revealed United States Department of Defense (DoD) doctrine¹ specifically envisages the use of nuclear weapons to "achieve US objectives" in the case where "deterrence fails". This means fighting a nuclear war. The doctrine states that "US nuclear forces provide the means to apply force to a broad range of targets in a time and manner chosen by the President."²

The doctrine states:

¹ US Department of Defense, *Nuclear Operations*, Joint Publication 3-72, Washington DC, 12 June 2019, available at: https://fas.org/irp/doddir/dod/jp3_72.pdf.

² DoD Nuclear Operations, p. I-3.

- “A nuclear weapon could be brought into the campaign as a result of perceived failure in a conventional campaign, potential loss of control or regime, or to escalate the conflict to sue for peace on more favorable terms.”
 - “Planning and operations must not assume use in isolation but must plan for strike integration into the overall scheme of fires.”
 - “Using nuclear weapons could create conditions for decisive results and the restoration of strategic stability. Specifically, the use of a nuclear weapon will fundamentally change the scope of a battle and create conditions that affect how commanders will prevail in conflict.”
4. The Dutch Government’s response to the AIV report refers to nuclear weapons being used as a matter of last resort, but the United States’ own nuclear weapons policy envisions a much more proactive and aggressive stance towards the use of nuclear weapons.
 5. The Dutch Government must clearly push back on such interpretations or risk being dragged into, or even tacitly endorsing, the escalation of a conflict to an all-out nuclear war. If the Dutch Government claims that it is already promoting arms control and disarmament within the NATO context, then it must reevaluate its strategy, since the nuclear weapon-possessing states within the alliance are moving decisively in the opposite direction.

Why the Netherlands should join

6. Nuclear weapons threaten every nation’s security and would cause catastrophic humanitarian consequences if used. The impact on civilians and the environment would be devastating. The ongoing nuclear modernization programmes of nuclear-armed states and the inflammatory rhetoric of certain leaders increases the likelihood of the use of nuclear weapons, either by accident or intent. This would seriously endanger the Netherlands and the world.
7. It is vital that states committed to nuclear disarmament and a rules-based world order work to strengthen the nuclear taboo by joining the TPNW. Nuclear weapons serve no legitimate military or strategic purpose. The TPNW offers the best hope of ending decades of deadlock in disarmament and moving the world towards the elimination of nuclear weapons.
8. The Netherlands has joined international treaties banning biological weapons, chemical weapons, anti-personnel landmines, and cluster munitions based on the inhumane and indiscriminate impact of these weapons on civilians. As a responsible member of the international community, the Netherlands should now join the UN treaty banning the worst weapons of all: nuclear weapons.

Alliance policy

9. There is nothing in the TPNW that prevents the Netherlands from maintaining a military alliance with a nuclear-armed state. (Indeed, a number of states in alliances with the United States have already signed and ratified the TPNW.) The North Atlantic Treaty Organization's legal foundation, the North Atlantic Treaty of 1949, does not mention nuclear weapons. NATO members are not legally bound to endorse the policy of "extended nuclear deterrence".
10. While NATO's first strategic concepts did not mention nuclear weapons at all, the current strategic concept, finalised in 2010, commits NATO "to the goal of creating the conditions for a world without nuclear weapons – but reconfirms that, as long as there are nuclear weapons in the world, NATO will remain a nuclear alliance". The purpose of the TPNW is precisely to "create the conditions" for a nuclear-weapon-free world.
11. Decisions about whether the arsenals of NATO's nuclear-armed allies are dismantled, retained, or upgraded are made not by the Dutch parliament, but by French, British, and American decision-makers. When it comes to the Netherlands's defence and foreign policy, however, the Dutch parliament is sovereign. NATO's strategic concepts are in any case not legally binding.
12. From a legal point of view, it is clear that the Netherlands would have revoke its policy of hosting United States' nuclear weapons were it to join the TPNW. Also important for the Netherlands is the undertaking contained in the TPNW not to "[a]ssist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party" under the TPNW. In practice, such a commitment would oblige the Netherlands not to act in a manner that could be seen to support the possession or use of nuclear weapons. The Netherlands would have to opt out of any language in future NATO strategic concepts that endorses activities prohibited by the TPNW. NATO members have on several occasions opted out of specific statements in, or attached additional comments to, NATO documents dealing with nuclear weapons.

Eliminating nuclear weapons

13. As a party to the TPNW, the Netherlands would be in a stronger position to work with other members of the international community to advance nuclear non-proliferation and disarmament. The TPNW contains mechanisms for a diplomatic process to improve and expand the treaty. A refusal to join the TPNW and engage with its processes would cast serious doubt on the Netherlands's commitment to the goal of a nuclear-weapon-free world and could be seen as tacit support for a new and dangerous nuclear arms race.
14. The TPNW is designed to help implement the NPT, which requires all its parties, including the Netherlands, to pursue negotiations in good faith on nuclear disarmament. Such negotiations had, until last year, been at a

standstill for more than two decades. The NPT itself envisages the creation of additional legal instruments for achieving a nuclear-weapon-free world. ICAN was disappointed that the Netherlands chose not to participate in last year's negotiations.

15. At a time of great global tension, when nuclear-armed states are modernizing their arsenals and threatening to use their nuclear weapons, it is all the more important for nations such as the Netherlands to declare their unequivocal opposition to nuclear weapons and to help strengthen international norms against them. The voices of fire and fury should not be met with silence. Joining the treaty is the only responsible course of action.