

Submission by PAX to *Inquiry into the consequences of a Swedish accession to the Treaty on the Prohibition of Nuclear Weapons*

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Introduction

PAX is pleased to make the following submission in regards to the recent Inquiry into the consequences of a Swedish accession to the Treaty on the Prohibition of Nuclear Weapons.

PAX is a Netherlands based civil society organisation engaging on a wide range of issues. PAX works together with committed citizens and partners to protect civilians against acts of war, to end armed violence, and to build just peace. The Humanitarian Disarmament unit within PAX seeks to prevent and remediate arms-inflicted human suffering and environmental harm through the establishment of norms. This approach to disarmament is people-centred in substance and process.

Background

The real threat of use of nuclear weapons is increasing, dramatically. Taboo against the use of nuclear weapons alone will not reduce these risks. Some efforts, such as de-alerting will help reduce risk, although de-coupling warheads from delivery systems has more impact, and neither eliminates risk completely. States joining the Treaty on the Prohibition of Nuclear Weapons recognise the risks of any use of nuclear weapons, and explicitly prohibited use, under any circumstances, as a way to – at least- strengthen the slipping taboo.

Impact of the Treaty on the Prohibition of Nuclear Weapons (TPNW) on the financial sector.

The language in the TPNW on assistance mirrors that in the Chemical Weapons Convention. In the Oxford Public International Law commentary on the Chemical Weapons Convention, assistance is understood to include the provision “*through financial resources.... to anyone who is resolved to engage in such prohibited activity*” and anyone that could be “*not only be a State, irrespective of whether or not it is a Party to the Convention, but also an organization, an enterprise, a person, or a group of persons, regardless of Citizenship.*”¹

As a result, the prohibition on assistance in the TPNW is increasingly understood by financial sector actors to also prohibit investments in the private companies producing nuclear weapons.

¹ The Chemical Weapons Convention: A Commentary, Edited By: Walter Krutzsch, Eric Myjer, Ralf Trapp, August 2014, Oxford Commentaries on International Law,

Across the financial sector, the Treaty on the Prohibition of Nuclear Weapons (TPNW) is already having an impact. In the first year after the adoption of the Treaty on 7 July 2017, 30 Financial Institutions previously known to have investment in companies associated with the production of nuclear weapons, ended their financial relationships.² This is a ten percent drop from the previous period.

There are a number of financial institutions that have also cited the TPNW as justification for ending their exposure to the companies associated with the production of nuclear weapons. These include, but are not limited to: Amalgamated Bank (US); ABP (the Netherlands), and; KBC (Belgium).³

Experience with other prohibited weapons systems, notably cluster munitions, shows that the financial sector is quick to reject exposure to companies known to be associated with prohibited weapon production.

Also in the case of cluster munitions, it is seen that stopping the financial flow to weapons producing companies has directly impacts decisions whether or not to continue production. For example, citing pressure from financial institutions, several producers of cluster munitions have stopped their production, including Textron, Lockheed Martin, Orbital ATK and Singapore Technologies Engineering – even though they are all from states not party to the Convention on Cluster Munitions (CCM).

Already the research PAX coordinates shows there are at least 23 financial institutions around the world with comprehensive policies preventing any type of financial exposure to any type of companies associated with producing (key components) of nuclear weapons. An additional 40 institutions have policies limiting their financial exposure.⁴

Impact of the Treaty on the Prohibition of Nuclear Weapons (TPNW) on other nuclear endorsing states - Dutch case study.

The Dutch government was the only government of a country currently endorsing the use of nuclear weapons on its behalf and including nuclear weapons in its security strategy to participate in the negotiations of the TPNW.

Despite pressure to boycott, the Dutch government participated in the negotiations for several reasons- including parliamentary pressure, citizen pressure and a long-standing self-promotion as a bridge builder between the nuclear armed and the rest of the world.

Since 2010, the second chamber of the Dutch Parliament (Tweede Kamer) has adopted, by majority, no less than fourteen motions relating to nuclear disarmament. These motions have included a number of repeated calls for increased transparency about US forward deployed weapons allegedly in the Netherlands, and several motions have demanded an intensification of the government's effort towards a nuclear weapons free world.⁵

In 2016, a campaign coalition consisting of PAX, the Dutch Red Cross, and ASN Bank launched a citizens initiative calling on the chamber to debate national legislation making nuclear weapons illegal. Over 45,000 Dutch citizens supported the call, triggering a debate in the chamber.

² Maaikie Beenes and Susi Snyder (2018) Don't Bank on the Bomb. Utrecht, the Netherlands: PAX, p. 6. Available at: https://www.dontbankonthebomb.com/2018_report_web/.

³ Susi Snyder, website *Don't Bank on the Bomb*, (4 July 2018), available: <https://www.dontbankonthebomb.com/happy-birthday-tpnw-have-some-divestment/>

⁴ Beenes and Snyder (2018), p. 7.

⁵ An overview of all nuclear weapon related motions can be found here (in Dutch): <https://nonukes.nl/overzicht-van-aangenomen-moties-in-de-tweede-kamer-over-nucleaire-ontwapening/>

The debate in April 2016 resulted in several motions put forward during the debate, four of which received majority support during the voting session. Overwhelming the chamber voted to support the start of negotiations on an international treaty banning nuclear weapons calling on the government to participate without prejudice to the outcome, in addition parliament also endorsed the proposal to disclose the secret treaties on the basis of which nuclear weapons were placed in the Netherlands. MPs also supported the request to use the unwanted modernization of nuclear weapons in Europe to boost global nuclear disarmament. Lastly, the House called on the Dutch government to work with the United States to end any Dutch reliance on nuclear weapons.⁶

The Dutch government subsequently participated in the TPNW negotiations, though ultimately voted against the adoption of the Treaty in July 2017. Explanations for voting against the treaty have been requested by parliament and sent by the ministry of foreign affairs. These explanations indicate that the Dutch criteria for the TPNW were not met. Those criteria were presented at the outset of negotiations, and included:

1. Combability of a ban with membership of NATO;
2. The inclusion of adequate verification provisions;
3. The need not to undermine the Non-Proliferation Treaty (NPT), and;
4. The Netherlands made it clear that a ban on nuclear weapons receive broad support among both nuclear and non-nuclear weapon states.

In explaining why the Netherlands voted against the adoption of the Treaty, the Foreign Minister explained that all of these criteria were not adequately met.⁷

The Parliament has recently requested, through another motion of 28 November 2018, that the government conduct a legal analysis on ways to join the Treaty on the Prohibition of Nuclear Weapons.

The Dutch Minister of Foreign Affairs responded to the 28 November 2018 request of parliament by letter on 30 January 2019. The response stated that the starting point is that rules of international law are part of the Dutch legal system. The ministry went on to explain that there are no obligations arising under the Treaty on the Prohibition of Nuclear Weapons that would require adjustment to existing Dutch legislation, although further implementing legislation would need to be adopted.⁸

In addition, representative surveys have shown that a large majority of the Dutch population, like populations from other European countries, think that the Dutch government should sign the TPNW.⁹

Continued pressure from parliament is likely to encourage the government to participate in all discussions possible related to nuclear disarmament and non-proliferation, as it has done to date while making preparations to join the TPNW.

⁶ More information including links to the relevant resolutions (in Dutch) can be found here: <https://nonukes.nl/netherlands-actively-negotiate-international-nuclear-weapons-ban-treaty/>

⁷ Letter from Minister of Foreign Affairs A.G. Koenders, 14 July 2017, "Nucleaire ontwapening en non-proliferatie" (Kamerstuk 33 783 – 26), available: <https://zoek.officielebekendmakingen.nl/kst-33783-26.pdf>

⁸ Letter from Minister of Foreign Affairs S.A. Blok, 30 January 2019, "Uitvoering van de motie van het lid Voordewind over draagvlak voor het VN-verdrag inzake kernwapenverbod (Kamerstuk 33694-31)", available: <https://www.tweedekeamer.nl/downloads/document?id=85cac856-f697-4ff6-af22-7f13081a21fc&title=Uitvoering%20van%20de%20motie%20van%20het%20lid%20Voordewind%20over%20draagvlak%20voor%20het%20VN-verdrag%20inzake%20kernwapenverbod%20%28Kamerstuk%2033694-31%29%20.pdf>

⁹ ICAN (July 2018) "One year on: European attitudes toward to Treaty on the Prohibition of Nuclear Weapons", page 6, available at http://www.ican.org/wp-content/uploads/2018/07/YouGov_ICAN_EUNATOPNW2018.pdf

The Swedish government should take note that according to the Dutch government there is no legal blockage for a NATO member to join the TPNW.

Conclusion

PAX appreciates the opportunity to submit information about the TPNW from the perspective within a nuclear weapon hosting member of NATO. We urge the Swedish Government to join the Treaty on the Prohibition of Nuclear Weapons as part of the global non-proliferation and disarmament regime, and that countries and entities within their jurisdictions will be adhering to it. We remain at the disposal of the government should further information be useful.