



Stakeholder submission for the 41th session of the Universal Periodic Review Report on the Netherlands

As the largest peace organization in the Netherlands, PAX works to protect civilians against acts of war, to end armed violence and to build inclusive peace. Among its activities, PAX advocates for nuclear disarmament and for public recognition of the catastrophic humanitarian consequences of any use of nuclear weapons. PAX is a member of the International Steering Group of the 2017 Nobel Peace Prize winning ICAN (the International Campaign to Abolish Nuclear weapons). ICAN received the Nobel Peace Prize for its efforts “to draw attention to the catastrophic humanitarian consequences of any use of nuclear weapons” and its “ground-breaking efforts to achieve a treaty-based prohibition of such weapons”.

PAX calls upon the Netherlands to work towards the full removal of all nuclear weapons hosted on its territory and to sign and ratify the Treaty on the Prohibition of Nuclear Weapons (TPNW).

Treaty on the Prohibition of Nuclear Weapons

The Treaty on the Prohibition of Nuclear Weapons (TPNW), which entered into force in January 2021, prohibits the use, development, testing, production, manufacturing, acquiring, possession, stockpiling, transferring, receiving, threatening to use, stationing, installation, or deploying of nuclear weapons, as well as any assistance with those acts. The Treaty has clear references to and implications for human rights law and practice. Preambular paragraph 8 reaffirms “the need for all States at all times to comply with applicable international law, including international humanitarian law and international human rights law” The most relevant rights concern from a nuclear weapons attack is the right to life. Other relevant rights concerns include the prohibition of inhuman and degrading treatment, the right to a home and to property, as well as rights violations resulting from nuclear weapons testing.

PAX regrets that the Netherlands has not yet signed or ratified the TPNW. While the Netherlands did participate as the only NATO-member state in the negotiations of the Treaty, it nevertheless voted against its adoption. Among other reasons it considered the obligations under the TPNW to be incompatible with its NATO commitments.¹ The Netherlands has consistently voted against an annual UN General Assembly resolution since 2018 that welcomes the adoption of the Treaty and calls upon all states to sign, ratify, or accede to it “at the earliest possible date”.

The councils of several Dutch cities, including Amsterdam, Nijmegen, Groningen and Rotterdam, have called on the Dutch government to sign and ratify the treaty. A public opinion poll conducted by YouGov in January 2021 moreover found that 78 per cent of Dutch people believe that their

¹ Explanation of vote of the Netherlands on text of Nuclear Ban Treaty, 7 July 2017, available under http://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/7July_Netherlands.pdf



government should sign the treaty.² In fact, 68% said the Netherlands should be among the first members of the North Atlantic Treaty Organisation (NATO) to join, even if the country were pressured by the United States not to do so.

Nuclear weapons hosting state

The Netherlands is one of five members of NATO to host US nuclear weapons on its territory as part of a nuclear-sharing agreement.³ The Dutch air force is assigned approximately 20 B61 nuclear bombs, which are deployed at Volkel Air Base. With the arrival of the new F-35 Joint Strike Fighter (JSF) aircrafts at Volkel Air Base by the end of June 2022, these bombs are expected to be replaced by B61-12 models. These modernized bombs allow for the destruction of smaller targets with more precision. This will, however, only enhance the risk of their actual use, which would have widespread and catastrophic humanitarian consequences.

Nuclear weapons pose a direct and constant threat to people and the environment. Far from keeping the peace, they breed fear and mistrust among nations, and enable acts of aggression against other states. In addition, there have been many documented instances of the near-use of nuclear weapons as a result of miscalculation or accidents; a risk further exacerbated with the advanced capabilities of today's emerging technologies⁴. The risks attached to hosting nuclear weapons was illustrated again by a recent Bellingcat investigation in May 2021, which revealed how US soldiers tasked with the custody of nuclear weapons at Volkel Air Base had inadvertently exposed a multitude of sensitive security protocols, including those containing information about where these weapons are stored.⁵

As confirmed by the Human Rights Committee in its General Comment No. 36, any use of nuclear weapons would be incompatible with respect for the right to life, as recognized under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). In paragraph 66, the Committee states:

The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law. States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-state actors, to refrain from developing, producing, testing, acquiring, stockpiling, selling, transferring and using them, to destroy existing stockpiles, and to take adequate measures of protection against accidental use, all in accordance with their international obligations. They must also respect their international obligations to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control and to afford adequate reparation to victims whose right to life

² International Campaign to Abolish Nuclear Weapons (ICAN), NATO Public Opinion on Nuclear Weapons, January 2021, available under https://d3n8a8pro7vhm.cloudfront.net/ican/pages/234/attachments/original/1611134933/ICAN_YouGov_Poll_2020.pdf?1611134933

³ Hans M. Kristensen & Matt Korda (2019) United States nuclear forces, 2019, *Bulletin of the Atomic Scientists*, 75:3, p. 131.

⁴ International Campaign to Abolish nuclear Weapons (ICAN), BRIEFING: Emerging technologies and nuclear weapon risks, available under https://d3n8a8pro7vhm.cloudfront.net/ican/pages/1166/attachments/original/158022657/ICAN_emerging_tech_nology_and_nuclear_weapons_policy_briefing.pdf?1580226579.

⁵ Foeke Postma, US Soldiers Expose Nuclear Weapons Secrets Via Flashcard Apps, *Bellingcat*, 28 May 2021, available under <https://www.bellingcat.com/news/2021/05/28/us-soldiers-expose-nuclear-weapons-secrets-via-flashcard-apps/>.



has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with principles of international responsibility.

This paragraph complements and updates CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life, adopted by the Human Rights Committee on 9 November 1984. Under the ICCPR, Article 4(2), the right to life is non-derogable, to be observed in all circumstances, even in the event of a “public emergency which threatens the life of the nation.” The Netherlands is a state party to the ICCPR and is therefore under an obligation to implement its provisions in good faith according to Article 26 of the 1969 Vienna Convention on the Law of Treaties. While the General Comment is not legally binding as such, it is considered the Committee’s authentic interpretation of Article 6 and the relevant practice thereto, within the meaning of Article 31 of the Vienna Convention on the Law of Treaties.

Recommendations:

In light of the foregoing, PAX calls upon the Netherlands to:

- Work towards the full removal of all nuclear weapons hosted on its territory
- Sign and ratify the TPNW as a matter of international urgency