

## LEGALITY OF NUCLEAR WEAPONS WITHIN ALLIANCES

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*Through the North Atlantic Treaty Organization, five European countries are hosting nuclear weapons for the United States. While the Nuclear Non-Proliferation Treaty might not explicitly forbid such behaviour as long as the U.S. maintains control over the weapons, such action may go against the spirit of the Treaty. The Treaty on the Prohibition of Nuclear Weapons is clearer on the matter: countries party to this Treaty would not be able to host nuclear weapons.*

Since the beginning of the Cold War, several countries have hosted nuclear weapons on their soil. “Hosting” meaning that these nations have never produced nuclear weapons and that they do not possess their own arsenals. In these cases, nuclear weapons are still controlled and therefore legally “in the possession” of the country that produced them.

According to the Defence Committee for the British Parliament, this nuclear sharing arrangement convinced several European countries not to develop their own nuclear weapons arsenals. While this rationale might have been sound in the Cold War, now it could push other countries such as China or Pakistan to pursue a similar scheme with other countries<sup>1</sup>. This may not be that far-fetched, as there have been reports of talks of nuclear weapons sharing between Pakistan and Saudi Arabia<sup>2</sup>.

Today, under the defense system of the North Atlantic Treaty Organization (NATO), Germany, Italy, Turkey, Belgium, and the Netherlands are hosting between 150<sup>3</sup> and 180<sup>4</sup> American nuclear weapons on their soil. Some countries criticize this arrangement, while the U.S. and these host countries argue that it is not illegal.

According to the countries who disagree, this scheme violates the “spirit” of the Nuclear Non-Proliferation Treaty and/or goes against the two first articles of the NPT. These two articles prohibit countries from transferring or receiving nuclear weapons or devices. If countries party to the NPT were receiving the weapons and took over control of them, that would be a legal violation of the treaty. But because the articles of the NPT do not mention the hosting of these weapons, some NATO countries argue that they are only hosting these weapons for the United States and that the weapons remain in U.S. control.

While it appears that such hosting does not directly violate articles of the NPT treaty, it would be possible to understand that the hosting of these weapons by some foreign country would go

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<sup>1</sup> “The future of NATO and European defence.” *House of Commons Defence Committee*, Ninth Report of Session 2007-08, p.80.

<sup>2</sup> Mark Urban. “Saudi nuclear weapons ‘on order’ from Pakistan.” *BBC*, 6 November 2013

<sup>3</sup> Kristensen Hans M. Kristensen, and Matt Korda, “United States nuclear forces, 2019”. *Bulletin of the Atomic Scientists*. 75 (3): 4 May 2019.

<sup>4</sup> Tim Street, “ORG Explains #5: NATO Nuclear Sharing, *Oxford Research Group*. *Breaking the cycle of violence*.

against the “spirit” of the treaty. In the preamble, the NPT stipulates that “the proliferation of nuclear weapons would seriously enhance the danger of nuclear war.” It says further that the countries should aim “for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons.” In light of the “spirit” of the treaty, embodied in its preamble and its articles, any kind of proliferation such this one could be seen as legally questionable. According to the Oxford Research Group, “critics highlight [...] the need for states to abide by their international non-proliferation and disarmament obligations.”<sup>5</sup>

U.S. lawyers argue that they are only putting the nuclear weapons on the soils of these countries. The hosts are only hosting American weapons but they do not control them in peacetime. The argument is that “the transfer of control is legal because, on the outbreak of ‘general war’, the NPT has failed in its purpose and can be regarded as no longer in controlling force.”<sup>6</sup>

Under the Nuclear Planning Group, European NATO allies participate in “nuclear decision making as well as discussions about the Alliance’s nuclear policy and doctrine.”<sup>7</sup> European NATO-allies are allowed to veto the use of nuclear weapons under NATO command, but not order their use: “the US National Command Authority retains the launch codes for use of US weapons in Europe” and as such, nothing can be armed without the U.S. President giving express orders<sup>8</sup>.

In peacetime, “all US weapons remain under custody of U.S. forces,” but this situation could change in the case of war: all six European countries hosting these weapons maintain one Air Force unit equipped, trained, and ready for the conduct of NATO nuclear missions.<sup>9</sup> According to a previous U.S. Chief of Staff, in case of war, the U.S. President could give transfer command of these weapons to the host countries. In the case of war, the legality of such action depends on whether the treaty would still be binding. As mentioned, the U.S. argues that the NPT would not be binding, and therefore their NATO arrangement is legal. In any case, hosting nuclear weapons in non-nuclear armed countries appears to go against disarmament, which is the “spirit” of the NPT.

While the NPT does not mention the hosting of nuclear weapons, the Treaty on the Prohibition of Nuclear Weapons (TPNW) is clearer on the matter: it clearly states that each country party to the treaty undertakes to never “allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.”<sup>10</sup> It is clear that if NATO countries such as Belgium, the Netherlands, Germany, Italy

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<sup>5</sup> Tim Street, “ORG Explains #5: NATO Nuclear Sharing, *Oxford Research Group. Breaking the cycle of violence.*

<sup>6</sup> “The future of NATO and European defence.” *House of Commons Defence Committee*, Ninth Report of Session 2007-08, p.80.

<sup>7</sup> <https://www.bits.de/public/researchnote/rn97-3.htm>

<sup>8</sup> <https://www.bits.de/public/researchnote/rn97-3.htm>

<sup>9</sup> <https://www.bits.de/public/researchnote/rn97-3.htm>

<sup>10</sup> “Treaty on the Prohibition of Nuclear Weapons (TPNW).” *NTI Building a Safer World*, 14 November 2019, article I(g).

and Turkey signed and ratified the TPNW, they would no longer be able to legally host these weapons on their soil once the Treaty entered into force.

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