

Presentation to the Standing Committee on National Defence by Peggy Mason, President of the Rideau Institute, 20 Nov 2017.

Thank you very much for inviting me to address the Committee on **Canada's Involvement in NATO**. In this written submission I will focus on the urgent and very topical issue of NATO's nuclear posture.

I bring to this commentary considerable professional experience in the area of nuclear non-proliferation and disarmament, including, as Canadian Ambassador for Disarmament, leading the Canadian delegation to international conferences to review the operation of the [Nuclear Non-proliferation Treaty \(NPT\)](#), the treaty setting out the international rules and obligations for its 191 states parties and which the North Atlantic Council in its [September 20th statement](#) described as "the heart of global non-proliferation and disarmament efforts for almost 50 years". Canada is a non-nuclear-weapons state (NNWS) party to that treaty as are all the other NATO members, with the exception of the USA, the UK and France, who are three of the five "declared" nuclear-weapons-state (NWS) parties to the treaty¹. Under Article VI of that treaty, as interpreted unanimously by the 1996 Advisory Opinion of the International Court of Justice (ICJ), all states parties, whether NWS or NNWS, are under a legally binding obligation "... to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective control".

This legally binding international obligation stands in sharp contrast to the strictly *political* commitment made by NATO member states to its nuclear posture, a policy, not a legal obligation, there being no reference whatsoever to nuclear weapons in the North Atlantic Treaty.

From the 1970 entry into force of the NPT there has been controversy over the self-evident contradiction between the *non*-nuclear weapons status of countries like Canada, Norway and the Netherlands and our participation in a nuclear-armed alliance. The justification has always been that NATO's nuclear posture predates the treaty and therefore is somehow justifiable, despite the lack of any language in the treaty to support this argument.²

Canada in the past has tried very hard to minimize this contradiction and to live up to the NPT's Article VI "good faith nuclear disarmament obligation" by championing measures like a comprehensive nuclear test ban treaty, even during the darkest days of the Cold War when the USA was adamantly against it. For years, in UN meetings of the western consultation group

¹ The other two are China and Russia. The five nuclear-armed states who are party to the NPT are referred to as declared "nuclear weapons states", a term established by the NPT. The other four states with nuclear weapons who are *outside* the Treaty – India, Pakistan, Israel and North Korea – are known as "nuclear-armed states".

² The normal procedure for allowing certain practices to continue that would otherwise be contrary to the treaty is to "grandfather" them through explicit language in the treaty to this effect.

which I chaired, the head of the US disarmament delegation would accuse nuclear test ban co-sponsors like Canada, Germany and the Netherlands of “treason” against NATO but this did not alter our support for the this measure. And finally, the USA itself came on board.

At the end of the Cold War, which paved the way for huge decreases in the nuclear arsenals of the then Soviet Union and the USA, conditions were such that the [1990 London Summit of NATO Heads of Government](#) even made the following statement:

“However, in the transformed Europe, they [NATO member states] will be able to adopt a new NATO strategy making nuclear forces truly *weapons of last resort*.” [Emphasis added.]

Such a declaration was totally in keeping with one of the central lessons of the Cold War – that a nuclear war can never been won and so must never be fought. The sole utility of nuclear weapons, therefore, is to deter their use by others, until such time as they are entirely eliminated.

The logical consequence of this Summit Declaration would have been a new post-Cold war NATO strategic doctrine adopting a no-first-use policy as the only possible interpretation of the phrase “adopt a new NATO strategy making nuclear forces truly weapons of last resort”. Tragically, that was not the result of the ensuing NATO review of its strategic doctrine. Instead, unbelievably, the most powerful conventional military alliance on earth reiterated the need for nuclear weapons as a means to prevent war (not just to deter the use of other nuclear weapons), albeit at a reduced level of importance from the height of the Cold War. Here is the relevant passage from the updated NATO [1991 Strategic doctrine](#)

“The fundamental purpose of the nuclear forces of the Allies is political: to preserve peace and prevent coercion and any kind of war.”

Thus, the first use option was retained under a “flexible response doctrine” and an historic opportunity was lost for NATO to lead by example on delegitimizing nuclear weapons.

Every strategic doctrine review since then has reaffirmed the necessity of nuclear weapons, not only to deter their use by others, but also for the prevention of war, with NATO in effect saying to the 162 NNWS states party to the NPT *outside* of NATO – “Don’t do as we do, do as we say.”

All of this was tolerable while the world continued to see progress towards nuclear disarmament, albeit at a progressively slower pace. But even slow progress started to unravel when George W. Bush unilaterally walked away from the [1972 Anti-Ballistic Missile Treaty](#) in December 2001, with President Putin declaring the action “an error” and the head of Russia's armed forces, General Anatoly Kvashnin, declaring, rather presciently as it turned out, that the pullout “will

alter the nature of the international strategic balance in freeing the hands of a series of countries to restart an arms buildup."

The Obama-era nuclear posture review made non-proliferation its highest priority and, based on the perceived overwhelming American advantage in conventional weaponry vis-à-vis Russia, concluded that "the United States will continue to strengthen conventional capabilities and *reduce the role of nuclear weapons in deterring non-nuclear attacks.*" [Emphasis added.] This approach opened the way for potential further nuclear reductions and led in 2010 to the signing of the [New Start treaty](#) with the Russians, mandating a sharp reduction in nuclear warheads and delivery systems for both countries. Each side was to be limited to 1,550 warheads and some combination of 700 delivery systems, including intercontinental ballistic missiles (ICBMs), submarine-launched ballistic missiles (SLBMs), and heavy bombers.

In the event, with the significant deterioration in USA-Russia relations, far-reaching reductions were replaced by a trillion dollar USA nuclear weapons modernization programme, matched in turn by a Russian effort in the \$800 billion range and lesser but still significant programmes in all of the other nuclear-armed states.

A December 2016 [report](#) by the Defense Science Board (DSB), a Pentagon-funded advisory group that reports to the secretary of defense argued against continuing the Obama approach, preferring instead "a more flexible nuclear enterprise that could produce, if needed, a rapid, tailored nuclear option for limited use should existing non-nuclear or nuclear options prove insufficient."

Soon after, as the newly-installed commander-in-chief, Trump signed a [presidential memorandum](#) instructing the secretary of defense to undertake a nuclear posture review ensuring "that the United States nuclear deterrent is modern, robust, flexible, resilient, ready, and appropriately tailored to deter 21st-century threats and reassure our allies."

We await the results of this review which will almost certainly increase the role of nuclear weapons in American strategic planning.

The American nuclear weapons modernisation program is of particular relevance to NATO. It involves the introduction into the 5 NATO basing countries³ for American so-called tactical⁴ nuclear weapons of upgraded B-62 nuclear weapons with lower yield and greater precision. These are the very characteristics that caused the U.S. Congress to ban the development of these weapons in the 1990's because, they argued, they created the "illusion" of usability, when the only rational role for nuclear weapons was to deter their use by any one.

In the meantime, the vast majority of the international community was becoming increasingly frustrated by the failure of the Conference on Disarmament (CD), the supposed "sole multilateral

³ Belgium, Germany, Italy, Netherlands and Turkey. All are non-nuclear weapons state party to the NPT.

⁴ I say "so-called" tactical nuclear weapons because it is inconceivable that any detonation of nuclear weapons, however precise, would not have strategic effects.

negotiating body for nuclear disarmament”, to agree even on a work program, never mind actual steps towards nuclear disarmament. Despite this, Canada continued to espouse a “step by step” process akin to walking slowly forward on a conveyor belt toward the ever-receding nuclear disarmament horizon while the belt itself hurtled in the other direction towards a world with ever increasingly lethal nuclear weapons.

This global dissatisfaction led ultimately to a strong majority of UN member states refusing to be stymied by the archaic and undemocratic consensus rules of procedure in the CD and, instead, launching a multilateral negotiation for a nuclear prohibition treaty by a majority vote of the UN General Assembly in December of 2016. This negotiation – which Canada shamefully voted against and then even more shamefully boycotted - culminated in a new treaty text, which was approved by 122 UN member states on July 7th, 2017, opened for signature at the UN on September 20th, 2017 and which now has 53 signatories. The text of the [Treaty on the Prohibition of Nuclear Weapons](#) (TPNW or Nuclear Ban Treaty) is attached for ease of reference.

By this point, Canada had abandoned all pretext of pursuing meaningful nuclear disarmament measures, as required by its Article VI obligations under the NPT and, instead, had unequivocally and unprecedentedly thrown its lot in with the western nuclear weapons states party to the NPT. Thus Canada agreed to an extraordinary statement issued by the North Atlantic Council commenting negatively on the Nuclear Prohibition Treaty on the very day it opened for signature. ([I attach that NAC Statement for ease of reference.](#))

The statement contains multiple errors, misinterpretations of international law and just plain inanities, which would be bad enough if they were only being mouthed by nuclear weapons states but which are shockingly inappropriate for a NNWS party to the NPT like Canada, with a long and proud history of championing nuclear disarmament even in the darkest days of the Cold War.

The most egregious assertion in the September 20th NAC statement is that the Nuclear Ban Treaty “risks undermining the NPT”. Precisely the opposite is true. Those states who sought to abort the ban treaty negotiation and who are now futilely trying to prevent it coming into force are of course the ones who are undermining the NPT! Such a state of affairs is regrettably not that unusual when it comes to the western nuclear weapons states. What is truly unprecedented and unacceptable is that *non*-nuclear weapons states like Canada have joined in this calumny.

The second blatantly inaccurate assertion is that the nuclear ban treaty “will not engage any state actually possessing nuclear weapons”.

Nothing could be further from the truth. Article 6 of the Nuclear Prohibition Treaty lays out in detail two methods for nuclear weapons states to join the treaty – through a “destroy and join” methodology or a “join and destroy” process, with the IAEA as the appropriate international body to take control of all resulting fissile material from decommissioned nuclear warheads.

One of the more hilarious parts of the statement – if the issue were not so deadly serious – is the assertion that the nuclear ban treaty “risks... creating divisions and divergences at a time when a unified approach to proliferation and security threats is required more than ever.” The General Assembly vote launching the ban treaty negotiation (which was then boycotted by all NATO members except the Netherlands) was a vote of 130 in favour (including 3 brave NATO members – Albania, Estonia and Italy), 12 abstentions (including Netherlands, China, India and Pakistan) and 31 against (including Canada and the rest of NATO.) In other words, the MINORITY causing the disunity and lack of consensus is accusing the overwhelming majority of being the ones at fault.

The September 20 NAC statement ends with the extraordinary declaration that “we [NATO] would not accept any argument that this [ban] treaty reflects or in any way contributes to the development of customary international law”. Happily for the rest of us, it is not up to NATO but the International Court of Justice and the International Criminal Court to determine what constitutes customary international law.

But having raised that issue, perhaps they might want to read once more the ICJ Advisory opinion to which I referred earlier, on the *illegality* of the threat or use of nuclear weapons except in the very narrowest of circumstances where the “very survival of the state” might be at stake. The court ruled that in *every other circumstance* the use of nuclear weapons (and therefore the threat to so use them) would be manifestly illegal under international law because of the inability of the use of nuclear weapons to meet the fundamental requirements of international humanitarian law in terms of discrimination between military and civilian targets and proportionality as between the military objective and the collateral damage.

Thus, the statement at the Halifax Security Forum last weekend by the [Commander of the U.S. nuclear arsenal](#) to the effect that he would never follow an order to use nuclear weapons that was illegal under international law was perhaps even more meaningful than he had intended.

So where does all this leave Canada? The answer is clear. It is our legal obligation under Article VI of the NPT to begin the process of signing and ratifying the Nuclear Ban Treaty by absenting ourselves from NATO’s nuclear doctrine⁵ and beginning a dialogue with NATO with the aim of

⁵ There is a long history in NATO of individual states absenting themselves from particular aspects of nuclear or other doctrine with which they disagree, and signalling their disagreement through a “footnote” in official communiqués. The most famous example is that of France absenting itself from the Nuclear Planning Group.

convincing other NNW States in NATO to similarly renounce NATO's unnecessary, dangerously provocative and counterproductive nuclear posture. An obvious first step toward this goal would be for NATO to abandon its retrograde "flexible response" doctrine in favour of a no-first-use of nuclear weapons policy. Such an updated strategic doctrine would finally fulfill the promise of the 1990 London Summit to make nuclear weapons "truly weapons of last resort".

Without such action, NATO, the most powerful conventional military alliance on earth, is on the one hand proclaiming that it needs nuclear weapons for its own security while, on the other hand, telling North Korea, as that country faces off against the United States and its allies, that it does not.