

# Utredning av konsekvenserna av ett svenskt tillträde till konventionen om förbud mot kärnvapen

Inquiry into the consequences of a Swedish  
accession to the Treaty on the Prohibition of  
Nuclear Weapons



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# Executive summary

## **Points of departure**

The Treaty on the Prohibition of Nuclear Weapons (TPNW), has now been open for signature and ratification for more than one year. As can be seen from the Inquiry's terms of reference, the issue it has been asked to address is how accession to the Treaty would impact on Swedish interests in a number of wider contexts. These relate to Sweden's non-proliferation and disarmament policy and to Swedish security and defence policy more broadly, including its bilateral and multilateral cooperative formats. Another issue concerns the problems of implementing the Treaty in Sweden.

## **Broad scope evaluation over time**

To perform an evaluation, there is a need to

- look up to see the Treaty in context,
- look down to track how it may affect the day to day management of crises and be applied in concrete cases of negotiations,
- look back at lessons learned and
- look ahead to the requirements of a world without nuclear weapons and in the step-by-step process towards this final stage.

Seeing the Treaty in context makes the impact assessment a complex task.

Partly, this is an issue of the current content of the Treaty as described in the Annex and of its direct and indirect impact on Sweden. But the impact of the Treaty also has to be evaluated over time. The question then arises what Sweden can do to promote conditions for

a Treaty in support of nuclear disarmament and non-proliferation without having serious negative side effects.

As will be seen Sweden needs clarity on these issues already at the time of signature.

And, as will also become evident, neither sufficient clarity nor a broad-based agreement exists after this first year of the Treaty. The very fact that a number of important questions remain open has significant consequences which need to be carefully taken into account by the Swedish Government.

It is against this background that the Inquiry draws conclusions about the consequences of a possible Swedish accession to the Treaty.

### **A goal-oriented evaluation**

The Inquiry relates the evaluation primarily to Sweden's National Security Strategy from 2017. In that strategy, Swedish policy for disarmament and non-proliferation is seen as a part of overall Swedish *security* policy. At the same time, the need for more *cooperation* in order to achieve disarmament is underlined.

A series of issues concerning the extent to which the Treaty fits into this larger context then arise, including the following:

- The combined danger of horizontal and vertical proliferation may lead to an unmanageable situation from the perspectives of arms control and peace. The transition towards a world free from nuclear weapons should be peaceful and avoid an arms race in other weapons categories.
- Armaments are symptoms of a wide range of security and other root causes. These need to be addressed as well. There is a need for comprehensive strategies, going beyond the NPT regime, and the Treaty needs to become a part of this wider framework.
- The new Treaty must fit into the wider arms control endeavours being pursued by the international community, particularly in the context of the NPT regime.

- For a long period ahead, the Treaty is not expected to actually manage a process of nuclear disarmament. To achieve that it would have needed to include all relevant nuclear and non-nuclear powers as parties. Conflicts and tensions where nuclear weapons play a role often involve both nuclear and non-nuclear states.
- This is not a mainstream arms control convention between the states most concerned but primarily an attempt by other nations and civil society to influence the disarmament and related policies of nuclear-weapon powers and their allies.
- Nevertheless, it is a treaty which prohibits with immediate effect – before nuclear disarmament is agreed - nuclear weapons-related cooperation (left undefined) and nuclear umbrellas.
- This is not only a legal instrument but also a political one that impacts on actors both inside and outside the Treaty. It has had political and other consequences well before it has even entered into force.

### **Sweden's earlier commitments and legitimate expectations**

The second point of departure for the evaluation, beyond the goal-related analysis described in the previous section, is Swedish commitments and legitimate expectations linked to existing treaties, mainly the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the broader NPT regime.

For Sweden and almost all other non-nuclear-weapon states a *prohibition* of nuclear weapons became a legally binding commitment already from the early 1970s. Sweden acceded to the NPT in 1970 codifying the country's commitment not to acquire nuclear weapons. This followed more than a decade of intensive public debate about the issue. Sweden has had and maintains the legitimate expectation that other States Parties to the NPT will respect the commitment to pursue nuclear disarmament and to promote non-proliferation of nuclear weapons.

This codification took place after the decision not to acquire nuclear weapons had been a political reality in Sweden for some time. Ratification of the NPT came after a broad-based agreement had

been established in the Swedish Parliament and in the Swedish population. The NPT has subsequently been developed over half a century to make it a more credible regime.<sup>1</sup> It has brought continuity to arms control cooperation over this period even though the political will to achieve progress has varied considerably over time.

A vital issue, therefore, is whether the TPNW strengthens or undermines what is often referred to as the NPT bargain, which includes nuclear disarmament, non-proliferation and controlled access to nuclear energy. It is also important to bear in mind that the TPNW commits States Parties to remain or become non-nuclear, but that there is no independent system to ensure compliance within the Treaty. It is largely dependent on what has been agreed under the NPT regime including through the Comprehensive Test Ban Treaty (CTBT).

The verification problem is also illustrated by the Biological Weapons Convention, which Sweden – after some hesitation – acceded to in 1975<sup>2</sup>. That Convention also lacks verification provisions and is strongly dependent on national export controls. The Chemical Weapons Convention (CWC), is a very elaborate, and very different elimination treaty. After a time-consuming process of preparation, the ambition was to make the CWC credible almost from the start. Achieving the same level of credibility will be a much more complex endeavour in the case of the TPNW. And the process has hardly begun.

In the Inquiry's assessment of the TPNW, these legal points of reference are relevant to understanding the situation now facing Sweden. There is a prehistory to the new Treaty that needs to be carefully studied and considered.

### **Will renewing vows undermine existing commitments?**

Should the Swedish Government legally reaffirm its vow to stay non-nuclear by acceding to the TPNW? All non-nuclear states acceding to the TPNW are likely to be parties to the NPT and would, therefore, be renewing their vows as well.

To what extent are the vows which have already been codified not only in the NPT itself but in the wider process of developing the NPT regime over the last 50 years *reaffirmed* in the new Treaty?

Here there are at least four overarching problems:

- The TPNW does not involve a requirement to be a party to the NPT. It is also possible to leave the NPT and still be a party to the TPNW.
- The TPNW prohibits nuclear testing, but does not require verification of this prohibition or accession to the CTBT. There are already States Parties to the TPNW that are not parties to the CTBT.
- In the implementation of the NPT, an Additional Protocol to the existing comprehensive safeguards agreements with the IAEA was developed in the 1990s in response to difficulties in verifying compliance (notably by Iraq). But the TPNW does not mention the existence of this new standard. Indeed, at least one key proponent of the TPNW describes the new Treaty as the new (and for non-nuclear-weapon states lower) standard.<sup>3</sup> A number of actual and prospective States Parties to the new Treaty have not acceded to the Additional Protocol.
- If States Parties to the TPNW seek to undo the part of the NPT bargain concerning the privileged status of the nuclear-weapon powers, is there a risk that others in return will seek to undo the balancing commitments regarding non-proliferation and access to nuclear energy?

The fact that the TPNW makes it possible to negotiate wider legally binding commitments in the domain of disarmament among its States Parties (possibly on the basis of majority voting) also needs to be taken into account. It is already a problem that the nuclear disarmament process is stagnating. Further fragmentation of efforts needs to be avoided.

## Global impact assessment

The new Treaty is likely to be of relevance for the simple reason that many states will accede to it. This is true whether Sweden does so or not.

The provisions of the Treaty will apply to States Parties alone. But it will nevertheless also impact on non-States Parties and their relations to States Parties.

A global impact assessment – while not directly linked to Sweden – is therefore also of importance when analysing the consequences of a Swedish accession.

From the terms of reference it follows that the Inquiry was to include an analysis of how a number of Western states and institutions, which will most likely not become States Parties in the foreseeable future, will relate to the Treaty and how this may affect Swedish cooperation with them.

## The case for the new Treaty in the view of its proponents

Those who argue in favour of the TPNW typically take their point of departure in the *frustration* that has built up over a number of years at the unwillingness/inability of the nuclear-weapon powers to fulfil their part of the NPT bargain. From this perspective, proponents develop an essentially political/normative argument in favour of the new Treaty.

Opponents typically put forward a more detailed criticism mainly from a security policy perspective.

The well-established goal of a world free from nuclear weapons is described by proponents as the only ultimately viable way of avoiding the devastating humanitarian consequences of a nuclear war.

There is a strong belief among proponents of the TPNW in the potential of the new Treaty to catalyse progress towards nuclear disarmament. This goal can primarily be achieved by influencing public opinion on the basis of a legal prohibition of nuclear weapons and nuclear deterrence policies.

### **The TPNW may have a profound moral and political impact**

Although states remaining outside the TPNW will not be legally bound it, many proponents and opponents of the new Treaty seem to agree that it will have potentially fundamental consequences, going far beyond a general and abstract delegitimisation of nuclear weapons:

- Stigmatisation is directed against the possession and use of nuclear weapons and the Treaty proposes to undo the initial recognition given to the five possessors of nuclear weapons as States Parties to the NPT (which are also the permanent members of the UN Security Council, UNSC, the P5). In the eyes of the international community, this will tend to put the P5 morally and politically on a par with the nuclear-weapon states outside the NPT. For the P5, it means that their privileged status may be undermined. Until now they have been used to seeing the issue of compliance with multilateral nuclear arms control commitments mainly as one of preventing horizontal proliferation.
- Stigmatisation is also directed against NATO and other US allies and their nuclear umbrellas. The TPNW puts the spotlight on what is seen as the dangerous logic of nuclear deterrence and extended deterrence policies. TPNW proponents argue that this logic brings less and not more stability.
- Another overlapping target group includes states and non-state actors cooperating with nuclear-weapon states potentially assisting them in remaining nuclear-weapon states in direct or indirect ways.
- The text can also be used in domestic political contexts to influence decision-making in areas of relevance to the very broad and undefined set of prohibitions in the TPNW.
- The TPNW focuses attention on the need for nuclear disarmament, placing as a prohibition Treaty less emphasis on the need to prevent horizontal proliferation.

These issues have in combination led to a fundamental controversy that would have merited thorough discussion to establish more common ground.

The proponents of the new Treaty did not postpone action, however. They used a window of opportunity to create the new Treaty even if it meant doing so without securing the accession of the nuclear-weapon states and their allies.

In response, the P5 and many of their allies may be expected to go to great lengths to minimise the impact of the new Treaty. The expectation that accession to the new Treaty will be cost-free for States Parties in their cooperation with the nuclear powers and their allies is unrealistic. That this should be the case is clearly and publicly stated, not least by the US but also by France and the UK among others. It is a view explicitly shared by many NATO allies as noted by the Inquiry during interviews.

### **Critical questions about the process ahead in the relationship between States Parties and non-States Parties**

Overall there is a controversy about the viability of the *process* proposed by the new Treaty, on several key points:

- A process of balanced nuclear disarmament/arms control requires negotiations, which in turn are dependent on an inclusive approach not chosen in the TPNW. This reduces the usefulness of the Treaty in concrete situations, such as Korea. All the nuclear-weapon states concerned, as well as other relevant states, need to be States Parties. Renouncing nuclear umbrellas will not help if the nuclear threat remains. All parties to the conflict need to be engaged from the top, exerting peer pressure on each other.
- It is contested whether the normative impact of the TPNW will catalyse negotiations if key security concerns are left outside the discussion. Root causes of armaments must be addressed in parallel.
- The TPNW does not seem a sharp and very relevant tool when it comes to addressing the gaps in security and cooperation identified in this Inquiry, including the risk of unconstrained modernisation and proliferation of nuclear weapons. It focuses mainly on the normative perspective.

- For Sweden, it is, of course, imperative that not only the West but also, at a minimum, Russia is fully integrated in a nuclear disarmament process. There is very little likelihood that this will be accomplished through the new Treaty.
- The process towards nuclear disarmament requires confidence, which in turn presupposes the best possible verification of compliance with the TPNW. In this regard, the Treaty does not correspond to the consensus decision recorded in *Action 30* of the conclusions of the 2010 NPT Review Conference. That agreement concludes that the Additional Protocol of the NPT should be in force for all states in a nuclear-free world. In the view of the Inquiry, this must be interpreted to mean that the Protocol should be acceded to by as many countries as possible during the process of disarmament. This goal should be met not only by nuclear-weapons states, but also by all those states which may be seeking a latent nuclear weapons capability. This is a line of argument that has been supported by Sweden since the late 1990s.

## Assessment of the consequences of a Swedish accession

### Factors complicating the evaluation

The terms of reference put three clusters of questions to the Inquiry: on the impact on Swedish disarmament and non-proliferation policy, on security and defence cooperation and on how Sweden can comply with the new Treaty. These questions are interrelated in several ways and are all influenced by a number of common factors.

- Provisions of the Treaty will affect many sectors of society owing to the *dual-use* nature of knowledge, components and activities related to nuclear weapons that are also of importance in the civilian domain or in the context of conventional defence. More aspects currently prohibited by the Treaty may be of relevance to nuclear weapons than is commonly realised. Furthermore, the indirect effects of the new Treaty on important parallel arms control efforts may be significant.

- The general and global security policy implications alone of the Treaty are likely to have an impact on the conditions for Sweden's security and defence cooperation with partners. The disarmament and defence clusters taken together with the way the Treaty is formulated (broad scope, lack of definitions, etc.) in turn make it more complicated for Sweden to develop a national compliance system that is credible over the long term and provides legal certainty.

Much but not all of this would be of limited importance for Sweden if it were in a similar situation to many of the current signatories to the Treaty. But it is not. Sweden is situated in a particularly exposed geostrategic location, pursues a significant level of security and defence cooperation with its partners and has a long nuclear history, both civil and military.

### **Sweden and its disarmament and non-proliferation policy**

The Inquiry's evaluation of the impact on disarmament and non-proliferation processes has links to a number of security policy concerns of central importance for European and transatlantic cooperation and thus also for Sweden and Swedish policy.

In summary, the Treaty does not uphold the standards that Sweden and many of its partners have helped to develop over fifty years of disarmament negotiations, including as regards the need for verification. In several important respects, the new Treaty does not move in the direction which Sweden has actively supported over a long period of time. In particular, it does not reaffirm in a clear and binding way the importance of the NPT, the Additional Protocol and the CTBT.

Accession to the Treaty at this stage could, in addition, make it more, rather than less, difficult for many countries, including Sweden, to play a facilitating role in disarmament efforts. Sweden will be perceived in Europe as part of a small minority in a serious security policy disagreement between proponents and opponents of the Treaty. The majority will include almost all the EU Member States. Swedish expertise in the area of non-proliferation and disarmament will suffer.

The Treaty provisions would also put Sweden in a potentially difficult situation should the issue of withdrawal arise. The Treaty will most likely enter into force long before nuclear-weapon states have acceded. States Parties who perceive acute nuclear threats will be prevented from withdrawing from the Treaty if they are party to an armed conflict. They may, therefore, see themselves forced to leave the Treaty very early on. The withdrawal clause could fuel crisis at an early stage and limit Swedish room for manoeuvre severely in a further escalated situation.

### **Sweden and the impact on its security and defence cooperation**

As noted, Sweden is in a very exposed geostrategic situation and, partly for this reason, has significant ambitions in terms of cooperation with NATO and its member states and with Finland, based on several declarations of solidarity at the Swedish, Nordic and EU levels. In the view of an earlier Swedish inquiry, cooperation with Finland in this field represents a paradigm shift, in that it also includes joint planning for a wartime situation. In the view of this Inquiry, the consequences of a Swedish accession to the Treaty in its current form and in this context are going to be very negative in these respects.

The general security policy implications alone for NATO and its member states, have led NATO to reject the Treaty.

To this must be added the Treaty's prohibition of deterrence, including extended deterrence policies, which is directly aimed at NATO member states and, in the first place, at those not in possession of nuclear weapons but covered by a formal nuclear umbrella. In the Treaty, this prohibition is formulated not only in general terms but also as a prohibition against assistance which in several mutually reinforcing ways underpins the immediate prohibition of nuclear umbrellas – and does so before nuclear disarmament is a fact. The perceived threat thus remains, but the expected protective shield is proposed to be withdrawn.

Swedish accession would, not least in view of the nuclear umbrella issue, necessarily be perceived as a fundamental criticism of the strategic doctrine subscribed to by almost all of Sweden's neighbours and partners in NATO. In this context, Sweden would no longer be perceived as like-minded.

NATO, including the US, arguably, has a strong interest in cooperation with Sweden, particularly given the geostrategic location of the Nordic area. But there must be considered to be a substantial risk that following a Swedish accession, this ambition would be pursued in a way that mainly took the interests of NATO members into account, not the interests of Sweden. When defence planning of relevance to Swedish territory is carried out in the West, Sweden of course has a very strong interest in being aware of how this might influence its security. In a worst-case scenario, such planning could impact militarily on Swedish territory and on the Swedish population. Sweden has an interest in influencing (within the parameters defined by its security policy) as much as possible plans that affect its own neighbourhood.

In addition, lack of legal certainty regarding the implementation of the *assist* prohibition in the Treaty may influence the willingness of foreign actors, including in the private sector, to conclude long-term agreements.

In situations where Swedish participation in exercises or a staff presence abroad is under consideration or when foreign military visits to Sweden are being discussed, uncertainty concerning the interpretation of the Treaty, including on the part of foreign actors, could delay decisions or make them impossible.

Unless the Treaty text is amended, the accession of Sweden to the TPNW, would without any doubt prevent a possible future Swedish membership of NATO. This situation would remain the same as long as NATO remained a nuclear alliance.

Accession may also be expected to lead to a *stagnation* of current Swedish cooperation with NATO and bilaterally with NATO members. They may be expected to hesitate to maintain the current high level of cooperation with Sweden, should Sweden accede to the Treaty.

The decision taken by Finland not to take part in the negotiation of the Treaty, and also not to accede to it, has been explained from a disarmament and non-proliferation perspective, without reference to the Finnish NATO option. But serious security and defence implications do arise for Sweden with regard to its cooperation with Finland, given its close defence relations with this eastern neighbour. One primary reason for this is that the cooperation with

Finland is to a large extent implemented in the context of multilateral cooperation with NATO and the EU and also together with individual NATO members, notably the US. The two countries are situated in a region of great geostrategic importance. The strength of a joint Swedish and Finnish approach is likely to be severely affected.

### Swedish compliance issues

In the event of an accession, Sweden would need to make clear what rules applied and what liabilities existed for Swedish and foreign subjects operating within its jurisdiction.

During the negotiations, Sweden put forward proposals including definitions and other more precise language, which if accepted would have improved the basis for Swedish implementation. They concerned not only the definition of the term *nuclear weapons* but notably also the prohibition of assistance, which is particularly important for Sweden. These proposals were not accepted.

The new Treaty is consequently not formulated in a way that facilitates clear and enduring legal interpretations in the implementation of the Treaty in Sweden. It should be noted that the assist prohibition is defined in different ways by States Parties. Analogies with the assist prohibition in existing treaties on landmines and cluster munitions are not really applicable.

The question whether EU competences are also involved remains unanswered. The issue does not yet seem to have been considered at EU level, mainly owing to divergent views on the Treaty, but also because of a lack of clear provisions in the Treaty. Competences regarding decisions on export controls and also to a certain extent on safeguards are firmly established at the EU level through the Lisbon and Euratom Treaties.

## Conditions for a later Swedish accession

### Arguments in favour of a further development of the new Treaty

For the new Treaty to have a positive impact and attract key States Parties in terms of non-proliferation and disarmament, it will need to be developed.

The possibility of such further development is foreseen in the Treaty itself, which provides for both amendments and additional protocols. It is also possible that development of the Treaty can be initiated through political but not yet legally binding decisions taken at meetings of States Parties. Such decisions have been taken during a number of NPT Review Conferences.

The accession process still has a long way to go before the Treaty can enter into force. At the time this Inquiry reported, 69 of the 122 states initially supporting the Treaty in the General Assembly in 2017 had signed it and 19 States had ratified it. Fifty ratifications are required for the Treaty to enter into force.

With more clarity about the new Treaty, broader-based agreement could hopefully be reached both inside and outside Sweden.

Questions concerning how to create a viable disarmament process include:

- The possibility that further decisions may be made by States Parties using majority voting has been criticised by a number of nuclear-weapon states and their allies.
- In many countries, nuclear weapons are perceived as a fundamental basis for national security. The problems involved in achieving a viable and peaceful process towards a nuclear-weapon-free world are many. Systems to ensure collective security and verification (including the assist prohibition) in a such a world need to be exceptionally stringent. Such considerations are almost totally absent in the new Treaty.

### States Parties can develop the Treaty

Although some of them are initially likely to resist this, States Parties can do a lot to promote clarity even at an early stage *when and if the political will exists*.

In the first instance, they can do so through political agreements during the meetings of States Parties likely to take place in the years following the 2020 NPT Review Conference.

Since these meetings may be able to take decisions on the basis of majority voting (the procedural rules have yet to be decided), it should be possible to agree that accession to the NPT, the CTBT and the Additional Protocol is seen as obligatory for States Parties. This is not the case at present which is noteworthy given that almost all States Parties are already parties to these legal instruments.

Even if formal decisions to this end do not prove possible active efforts should be made to encourage additional existing and future States Parties to accede to these treaties during the NPT Review in 2020.

As a second parallel step States Parties can make clear that security concerns are valid and that a transition away from dependence on nuclear weapons will take time.

There will be a need for provisions covering the transition period until nuclear disarmament is underway and the necessary collective security guarantees are in place. It will most probably not be possible initially to apply the prohibitions as strictly as will be necessary in a world free from nuclear weapons. For this reason, disarmament must be seen as a step-by-step process. Each step must contribute to a balanced implementation, in a way that does not undermine what has so far been achieved under the NPT regime.

Third, clear, realistic and verifiable understandings of key prohibitions in the Treaty should be agreed among States Parties. This includes, in particular, the prohibitions on *assistance* and on the *development* of nuclear weapons. Both concepts are closely related to the fact that many of the components of a nuclear weapon and nuclear weapons-related activities/facilities – concepts which also need to be defined – are dual use. This means that intensive expert-level work will be necessary to define realistic requirements affecting research, production (including energy), trade and other forms of cooperation. To lead to a broader accession to the Treaty, this will need to include considerations of how to promote security and cooperation, to allow general technological progress and not least to meet legal requirements for the implementation of the Treaty in countries such as Sweden.

Fourth, the provisions setting the framework for verification, national export controls, etc. need to be adapted to a progressively more ambitious implementation. In the case of Sweden, it is not possible to achieve full implementation without the active engagement of EU Member States and institutions, for instance in the area of export controls.

Of course, resistance on the part of a number of present and future States Parties to the commitments discussed here must not be underestimated. Several states have worked actively over a long period of time for a free transfer of technology, without the limitations which they consider the Additional Protocol and different export control regimes impose. This resistance has been prompted not only by political and economic considerations, but also in several cases by a desire to build more military capability, including possibly a latent nuclear weapons capability.

If, after all, progress towards political understandings in these areas could gradually be reached among States Parties, this could help to make the new Treaty an integrated contribution to the NPT regime without serious counterproductive effects.

At that later stage, it will also be important that the institutional and cooperative conditions necessary for the effective functioning of the Treaty are in place.

### **Evaluation of the consequences of a step-by-step Swedish accession**

It might seem useful of course – as many in favour of the new Treaty have proposed – for states to accede to the Treaty and work for improvements to it from the inside. It has been suggested that Sweden should accede to make use of this possibility. But for this ratification would be necessary. Signature alone would not be enough.

Even if the necessary majority for ratification existed in the Swedish Parliament, it would put Sweden in the awkward position of seeking to improve a Treaty *after* it had promised to support it in its current form. The new Treaty stipulates in Article 12:

Each State Party shall encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty.

Accession would be perceived by many to mean that Sweden was putting less emphasis on the importance of its main objections to the Treaty,<sup>4</sup> as expressed in some 20 proposed amendments to the text and in an explanation of vote put forward on 7 July 2017 (see Annex).

Signature without de facto ratification would not bring the *legal right* to influence the development of the Treaty from within.

According to the Swedish tradition, signature would in itself bring the political expectation that Sweden supported the Treaty in its current form which would put the country in almost the same dilemma as if it were acceding. It is not Swedish practice to sign if there is not a clear intention to ratify.

The notion that Sweden could sign the Treaty and try to handle future difficulties as they arose is risky. Sweden would face dramatically more serious potential consequences, including in the area of security and defence, than the bulk of states that have signed so far.

The option to *observe* meetings of States Parties *before* a signature already exists in the Treaty. Observers are likely to be allowed to speak and circulate proposals, albeit without a right to vote. There are states and organisations that have not formally observed the negotiations leading up to the Treaty, but still exerted an active influence on the process. This option will also exist in the next phase. Formally observing the Treaty sends a political signal which needs to be carefully considered. The option of observing meetings of States Parties could be considered in depth when the conditions for observation have been defined by the States Parties. A decision on this option should take into account the costs of observation and how Sweden's status as an observer would be perceived.

Signature without ratification thus seems to bring no additional rights, while creating many of the same perceived political obligations and risks.

The problem is exacerbated by the fact that the issues identified in the course of the Inquiry go significantly beyond what was already noted in the explanation of vote on 7 July 2017, for instance as regards the nuclear umbrella prohibition.

The necessary clarifications are not likely to materialise through the first meetings of States Parties that are foreseen. The Inquiry has

not detected any willingness at this time on the part of actual or prospective States Parties to the Treaty to reconsider their refusal to accept most of the Swedish amendments.

## Conclusions

### Consequences of accession to the Treaty in its current form

To be able to minimise the negative consequences and maximise the positive, a long-term, goal oriented Swedish effort is required, anchored in a comprehensive security strategy. The Treaty has helped to increase awareness of the need for nuclear disarmament. But this is only the beginning of a long process.

Disarmament must include relevant nuclear weapon and other states and take into account the risk of horizontal proliferation, in particular in the Middle East and East Asia, in the light of Sweden's overall national interests.

It is very unlikely that the normative effect will be noticeable in the foreseeable future in countries with less developed democratic systems.

Lessons learned from the end of the cold war show that important steps can be taken that lead to an improvement of the international situation. Such steps necessitate dialogue. Fundamental decisions to disarm will require major improvements in the international situation linked to the root causes of conflicts.

The prohibition of assistance is an issue of key relevance to most points in the terms of reference. The prospects of achieving unity on the interpretation of this concept at different levels (in Sweden, in the EU, among States Parties and globally) are currently poor. The problem is exacerbated by the complexity of the nuclear issue and the prevailing lack of clarity about the future development of the Treaty.

In view of the prohibition of nuclear umbrellas, Swedish accession would be perceived as a fundamental criticism of the Strategic Concept adopted within NATO by almost all of Sweden's neighbours and partners in the European and transatlantic space.

## Sweden can contribute to better conditions without accession

It is important to promote development of the Treaty that will make it more acceptable, not only for Sweden but also for vital neighbours and partners of this country.

Sweden should support such a process. It will be of value in itself even if Sweden does not accede, and should be seen as an element in a future Swedish non-proliferation and disarmament policy, not least in the context of the NPT.

There is still significant interest among current States Parties in seeing Sweden as a State Party. The key measure of success – also expressed in the text of the Treaty – is universal accession.

The Treaty needs to contribute to real nuclear disarmament and non-proliferation in a context of maintained strategic stability.

The probability that states with real influence in this regard will accede to the Treaty in its current form is low.

In the view of the Inquiry, early steps signalling later Swedish accession would not promote further accession on the part of states that are neighbours and partners of Sweden. At the same time, States Parties might get the false impression that the Treaty could be maintained in its present form.

*The overall assessment of the implications for Sweden as regards the three main clusters of questions in the terms of reference leads to the conclusion that Sweden should neither accede to nor sign the Treaty in its present form.*

## Final words

Developing a clear vision for the way forward is a major challenge. Increased attention needs to be devoted to nuclear issues. Awareness of the existential questions involved is probably at a lower level than at the end of the cold war. If the Inquiry could contribute to increased engagement in this regard it would be useful.

It has been the Inquiry's ambition to leave no stone unturned in seeking to identify whether the necessity of moving towards nuclear disarmament can be promoted through the new Treaty.

From an early stage in the Inquiry, it became evident that further development of the Treaty would most likely be the only way for-

ward. This question was then discussed with more than 100 interlocutors. In the course of the Inquiry, the conviction grew that even if this avenue is beset with obstacles, there are no shortcuts.

The new Treaty focuses on far-reaching prohibitions that seek to directly influence states allied or cooperating with nuclear-weapon states. It is not clear that this in isolation will contribute constructively to nuclear disarmament in the short or even the medium-term.

In the meantime, the international community may lose the energy to promote implementation of the NPT regime, which covers almost all states including five nuclear-weapon states:

- It is serious enough that the commitment to promote nuclear disarmament embedded in Article VI of the NPT is now increasingly being called into question.
- Likewise, it remains a serious threat to world peace that both states and terrorist organisations try to use loopholes in existing arms control and export control regimes to acquire nuclear capacity.

It seems more important than ever to direct attention to existing commitments that have long been part of international law.

After the cold war, on a basis of cooperation and increased confidence, the international community was on its way to disarming nuclear and conventional weapons. It is high time to revive this ambition.

Not least in view of the NPT Review in 2020, it is important to counteract the fragmentation of support for nuclear disarmament and non-proliferation. Otherwise, the net effect may be less scope to influence nuclear-weapon powers to resume a process of nuclear disarmament.

### *References*

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<sup>1</sup> The thrust and proposed consequences of the NPT were relatively clear from the start. The Treaty was expected to lead to both non-proliferation and nuclear disarmament. Its text struck a compromise between the interests of the nuclear-weapon powers and the have-nots in terms of nuclear weapons and nuclear energy, the NPT bargain. Its verification arrangements, however, were much more focused on preventing horizontal proliferation than on disarmament. In this sense, NPT was discriminatory against the have-nots. It entered into force after 18 months, when 40 states had ratified it, including the US and the Soviet Union. The Treaty was prolonged indefinitely in 1995.

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At that time all the five permanent members of the UN Security Council (the P5) had acceded. *These were all nuclear-weapon states legitimised, albeit temporarily, by the NPT.* For them, nuclear weapons were not prohibited, although there was a nuclear disarmament commitment embedded in the Treaty which was also linked to conventional disarmament.

The NPT has since become an almost universal treaty. It has become the hub of a web of interconnected agreements and arrangements aimed at further clarifying the Treaty and helping to improve compliance, and being supported by several significant international institutions including the UN Security Council itself.

Importantly, though, even beyond the P5, the NPT does not create a universal prohibition of nuclear weapons, nor even a universal commitment to pursue nuclear disarmament. The NPT – like the new Treaty, the TPNW – is not binding on the states that remain outside it. For the NPT, these include India, Israel, Pakistan, South Sudan and since a few years back also North Korea. These States are (except for South Sudan) all deemed to be nuclear-weapon-states but are not legitimised in that capacity by the international community. North Korea has left the NPT and there is a risk that further states may take this dangerous step.

<sup>2</sup> In 1975, Sweden took another step of relevance to the new Treaty, this time seeking to promote the prohibition of another category of weapons of mass destruction, *biological weapons*, again after close to a decade of deliberations in the UN. In the international community this was a much more controversial process. The prohibitions were, as is the case with the TPNW, more ambitious than the NPT, including the *development* of biological weapons that is hard to verify. And the Swedish Government, proposing ratification of the convention, did so with hesitation, partly because, like the TPNW, it did not include adequate verification provisions. That hesitation was justified since the level of compliance with that Convention turned out to be highly contentious, with up to a dozen countries to date suspected of not complying with its provisions.

The Biological Weapons Convention, however, was not expected to have significant practical consequences for Sweden, either in terms of defence or in terms of the need for additional legislation to ensure compliance.

<sup>3</sup> "Brazil considers that accepting a clear prohibition of nuclear weapons under the TPNW, and working towards its strengthening and implementation, is the new standard for nuclear disarmament and non-proliferation, including in respect of nuclear safety and security." Opanal.org. (2018) [online]. Available at: <http://www.opanal.org/wp-content/uploads/2018/06/brazil-cluster-3.pdf> [accessed 1 Aug. 2018].

<sup>4</sup> Acceding while restating objections could be seen as contradicting important elements of the new Treaty. Primarily political but potentially also legal consequences could follow. Sweden can reach its own understandings of what the Treaty means. But consequences must be expected if uncertainty arises among Sweden's partners inside and outside the Treaty, including in the area of security and defence, about the permanence of these understandings. Sweden and Swedish industry and research are involved in long term cooperative endeavours which require predictability.

Acceding while not restating objections would disregard the fundamental need for more clarity about the consequences and effectiveness of the Treaty for a country in Sweden's position. It could also create uncertainty in the implementation of other treaties, including the NPT and its Additional Protocol, the CTBT and Swedish EU cooperation on the basis of the Lisbon and Euratom Treaties. The EU institutions seek to reach common solutions to problems that are also relevant to nuclear weapons, for instance regarding export controls. The initiative for this work lies to a large extent at the EU level.