

**Analysis of the Incompatibility of
NATO's Nuclear Sharing Arrangements
with the Treaty on the
Non-Proliferation of Nuclear Weapons**

China Arms Control and Disarmament Association

China Institute of Nuclear Industry Strategy

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Preface

NATO's nuclear sharing, a product of the Cold War and a tool of bloc confrontation, did not disappear from the historical stage after the end of the Cold War. Rather, the possibility of its expansion has always existed. Of particular concern are emerging signs of spillover into the Asia-Pacific region, which poses a severe challenge to the international nuclear non-proliferation regime based on the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and endangers international and regional peace and security.

On the eve of the second session of the Preparatory Committee for the 11th NPT Review Conference, we have prepared this report on the incompatibility of NATO's nuclear sharing with the NPT. We aim to present an accurate, comprehensive and informative picture to the international community from the perspective of Chinese think tanks and experts with a view to upholding the NPT regime.

The data, pictures and materials in the report are all from open sources. The authors welcome critiques from our readers for potential mistakes and shortcomings in this report. We would also like to acknowledge the encouragement, advice and research in related areas from Chinese and foreign think tanks and experts in the drafting process.

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Summary

The so-called “nuclear sharing” refers to arrangements between the United States and its NATO allies to strengthen extended deterrence. The arrangements allow the US to conditionally transfer in wartime its control over nuclear weapons to certain non-nuclear-weapon NATO members and to help in peacetime those countries to develop and acquire the ability to take over such control in wartime. Except for France, which pursues an independent nuclear policy, all the other 31 NATO allies are members of the Nuclear Planning Group.

The Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as “the NPT” or “the Treaty”) is the cornerstone of the international nuclear non-proliferation regime and an important part of the post-war international security system. Articles I and II of the NPT explicitly prohibit the transfer or receipt of nuclear weapons or their control in any way, which constitute a core element of the Treaty. The nuclear-sharing arrangements between the US and certain non-nuclear-weapon NATO members run counter to these two articles, representing a special form of nuclear proliferation.

Over the years, the US and its NATO allies have attempted repeatedly to defend their nuclear sharing arrangements on international fora. They assert that those arrangements had existed before the NPT, made public before treaty negotiations, and not been challenged during the negotiation and within the first 45 years after the Treaty’s entry into force. They also claim that the US will transfer nuclear weapons or their control to non-nuclear-weapon NATO allies only in wartime when the NPT will no longer be legally binding.

However, after consulting and comparing a large number of letters, memos, verbatims, meeting minutes and policy documents in detail, we find that facts suggest otherwise. In reality, during the NPT negotiations, many countries, including some NATO members, were unaware of the details of the nuclear sharing arrangements. Only a limited number of countries knew upon signing or ratifying the NPT that the US would unilaterally claim non-violation for its nuclear sharing as a national position. Over the years, there have always been voices questioning, criticizing and opposing NATO's nuclear sharing. The US unilateral assertion regarding the NPT losing its legal binding force in wartime is both dangerous and irresponsible.

As a product of the Cold War, NATO's nuclear sharing arrangements have long been out of date and should naturally be abandoned. The international community should be highly vigilant and resolutely resist the spread of nuclear sharing to other regions, especially the Asia Pacific. Otherwise, the NPT regime will be further undermined, breeding more risks and harms to international and regional security.

I. NATO's institutional arrangements for nuclear sharing

According to factsheets officially released by NATO,^[1] the so-called “nuclear sharing” is an enhanced extended deterrence^[2] arrangement between the US and its NATO allies, by which the US nuclear weapons are deployed in some non-nuclear-weapon allies, controlled, overseen and maintained by the US in peacetime, and carried into combat by designated allied dual-capable aircrafts in wartime after approval by NATO's Nuclear Planning Group (NPG) and authorization by the US President and UK Prime Minister. At present, NATO has 32 members states.^[3] Except for France, which pursues an independent nuclear policy, all the other 31 allies have participated in nuclear sharing arrangements.^[4]

NATO's nuclear sharing was started in the Cold War. Since its inception in 1949, NATO has placed nuclear deterrence as the center of its common security guarantee and collective defense. The organization's first Strategic Concept listed a basic undertaking to “*Insure the ability to carry out strategic bombing promptly by all means possible with all types of*

^[1] NATO, “Factsheet: NATO's Nuclear Sharing Arrangements”, February 2022; NATO, “Factsheet: NATO and the Non-Proliferation Treaty”, March 2017; NATO, “Factsheet: NATO Nuclear Deterrence”, February 2020.

^[2] Also known as the “nuclear umbrella”, by which the US extends the scope of its nuclear deterrence commitment to its allies and uses its own nuclear strength to deter opponents from attacking its allies. It is an important part the American nuclear strategy. Since the Cold War, the US has been providing extended deterrence for its NATO allies, Japan, South Korea and Australia.

^[3] Including 3 nuclear-weapon States parties to the NPT, including the US, UK and France, and 29 non-nuclear-weapon States parties.

^[4] As of April 2024, Finland and Sweden, the newest NATO members, had not publicly articulated whether they would join NATO's nuclear sharing arrangement. However, according to a statement by Swedish Prime Minister Ulf Kristerson in November 2022, “*We won't be making any preconditions. Sweden has the exact same approach as Finland as regards the issue of siting nuclear weapons in our countries. Naturally we embrace all of NATO's capabilities on nuclear weapons, but on positioning Sweden and Finland share the same conclusions and are on the same page.*” (See: <https://www.defensenews.com/global/europe/2022/11/18/finland-refutes-nuclear-weapons-siting-and-reinforces-border/>) We can reasonably guess that the two countries will also join nuclear sharing arrangements, including the NPG.

weapons, without exception. This is primarily a U.S. responsibility assisted as practicable by other nations.”^[5] The US identified theater nuclear weapons as a key component of its frontier defense in 1953 and shipped the first batch to Europe the following year. In 1966, NATO set up the NPG for nuclear policy discussions, marking the formal start of nuclear-sharing arrangements, which have evolved and sustained until this day.^[6] The latest Strategic Concept was updated in June 2022. It requires the non-nuclear-weapon members to extensively participate in nuclear sharing, emphasizing that *“NATO’s nuclear deterrence posture also relies on the United States’ nuclear weapons forward-deployed in Europe and the contributions of Allies concerned.”*^[7]

● US nuclear weapons deployed in Europe

The US and NATO have never disclosed accurate information about the US nuclear weapons currently deployed in Europe.^[8] Think tank experts estimated^[9] that about 100 B61-3 and B61-4 nuclear aerial bombs are deployed at six military bases of five NATO allies across Europe, including Kleine Brogel, Belgium; Büchel, Germany; Aviano and Ghedi-Torre Italy; Volkel, the Netherlands; and Incirlik, Türkiye^[10], as

[5] NATO, The Strategic Concept for the Defense of the North Atlantic Area (DC 6/1), <https://www.nato.int/docu/stratdoc/eng/a491201a.pdf>.

[6] Alberque, W. 2017. The NPT and the Origins of NATO’s Nuclear Sharing Arrangements. Institut Français des Relations Internationales, February; Burr, W. 2020. The U.S. Nuclear Presence in Western Europe, 1954–1962, Part I. Briefing Book #714. National Security Archive, July 21.

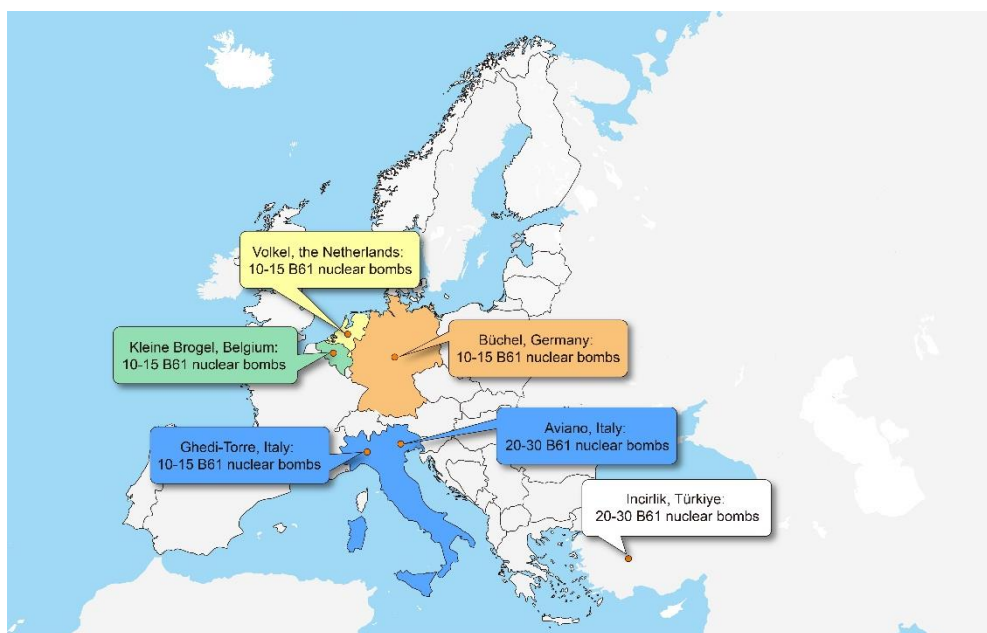
[7] NATO 2022 Strategic Concept, adopted by Heads of State and Government at the NATO Summit in Madrid, 29 June 2022.

[8] Factsheet: U.S. Nuclear Weapons in Europe, August 18, 2021, Center For Arms Control and Non-Proliferation.

[9] Hans M. Kristensen & Matt Korda (2022) United States nuclear weapons, 2022, Bulletin of the Atomic Scientists, 78:3, 162-184, DOI: 10.1080/00963402.2022.2062943.

[10] According to analysis by think tank experts, NATO is upgrading the infrastructure of the RAF’s Lakenheath base to potentially host US nuclear weapons in the future. See: Matt Korda & Hans Kristensen, Increasing Evidence That The US Air Force’s Nuclear Mission May Be Returning To UK Soil, August 23, 2023. <https://fas.org/publication/increasing-evidence-that-the-us-air-forces-nuclear-mission-may-be-returning-to-uk-soil/>.

well as increasing the deployment of B61-12 nuclear aerial bombs.^[11] These nuclear bombs are placed in underground warehouses of the above-mentioned bases, and carried and put into combat in times of need by NATO-designated fighters. The US holds the operational authority to activate those weapons in peacetime. The quantity of deployment peaked at about 7,300 in 1971 and then gradually decreased after the end of the Cold War and as the US readjusted its defense priorities.



▲ The US deploys about 100 tactical nuclear weapons in five NATO allies.

Map generated based on data from Hans Kristensen et al.

The Federation of American Scientists. 2023.

● The Nuclear Planning Group (NPG)

The NPG was founded in December 1966 to provide a forum for NATO members to consult and make decisions on the Alliance's nuclear weapons policy. At present, except France, all the other 31 NATO members are considered to have joined the mechanism. The NPG has a senior advisory body on nuclear policy and planning issues: the NPG

^[11] SIPRI Yearbook 2024: Armaments, Disarmament and International Security www.sipriyearbook.org.

High Level Group (HLG), chaired by the US, is composed of national policy makers and experts from Allied capitals. According to NATO official website, NPG discussions also cover “*the overall effectiveness of NATO’s nuclear deterrent, the safety, security and survivability of nuclear weapons, and communications and information systems.*” The Group “*reviews and sets NATO’s nuclear policy in light of the ever-changing security challenges of the international environment.*”

● **Dual-capable aircraft (DCA)**

Dual-capable aircraft is considered central to NATO’s nuclear deterrence mission.^[12] They are capable of both providing conventional air capabilities, such as air early warning and operational support, and carrying the US nuclear weapons for nuclear strike operations in wartime upon the NPG’s approval. NATO has made it public that the air forces of seven members have been designated to provide DCAs for the alliance’s nuclear missions. Apart from the US, the most widely known are Germany, Italy, Belgium and the Netherlands.^[13] At present, the Belgian and Dutch air forces use F-16 Fighting Falcon and their German and Italian counterparts use PA-200 Tornado fighters to perform their nuclear role, but all of them are seeking to replace the old aircrafts with F-35A fighters. In addition, the Czech Republic, Denmark, Hungary, Poland and two other unnamed countries are also ready to provide conventional air tactical support for NATO’s nuclear activities.^[14]

^[12] NATO, NATO’s nuclear deterrence policy and forces, Last updated: 30 Nov. 2023 09:06.

^[13] It is reported that Türkiye is the sixth country, and some of its F-16 fighters may be capable of dropping American B61 series nuclear bombs. There is also speculation that the seventh country may be Greece. Although American nuclear weapons were withdrawn from the country in 2001, there are still relevant reserve units and mission plans in the Greek armed forces. See: NATO Steadfast Noon Exercise and Nuclear Modernization in Europe. Federation of American Scientists, 17 October 2022. <https://fas.org/publication/steadfast-noon-exercise-and-nuclear-modernization/>.

^[14] Hans M. Kristensen, Matt Korda, Eliana Johns & Mackenzie Knight (2023) Nuclear weapons sharing, 2023, Bulletin of the Atomic Scientists, 79:6, 393-406, DOI: 10.1080/00963402.2023.2266944.

- **Nuclear deterrence exercises**

In recent years, NATO holds a routine nuclear deterrence exercise code-named Steadfast Noon on an annual basis, hosted by a different ally each year. During the exercises, the US nuclear weapons deployed in Europe are taken out of underground storage sites, safely transported and mounted to their delivery platforms, and training flights without live ammunitions are also conducted. The latest Steadfast Noon took place on 16 to 23 October 2023 over Italy, Croatia and the Mediterranean Sea. Sixty military aircrafts of various types from 13 NATO members were involved, including surveillance planes, refueling aircrafts and DCAs. It is worth noting that US Air Force B-52H strategic bombers with nuclear strike capability flew in for the second time in a row. NATO Secretary General Jens Stoltenberg said that the exercise will help to ensure the credibility, effectiveness and security of NATO's nuclear deterrent.^[15]



▲ In NATO's Steadfast Noon exercise, an F-15E fighter dropped a B61-4 nuclear bomb without live ammunition. Source: Sandia National Laboratory, USA

^[15] NATO holds long-planned annual nuclear exercise, 13 Oct. 2023, https://www.nato.int/cps/en/natohq/news_219443.htm.

II. The legal fact: NATO's nuclear sharing runs counter to the NPT

The NPT was concluded in 1968 and came into force in 1970. With 191 States Parties, including the five nuclear-weapon states, the NPT is the cornerstone of the international nuclear non-proliferation regime and an important part of the post-war international security system. In the over half a century since its entry into force, the Treaty has played a vital and irreplaceable role in preventing nuclear weapons proliferation and promoting the disarmament process. The 5th NPT Review Conference in 1995 decided to extend the Treaty indefinitely. A review conference is held every five years to review its implementation.

The NPT prohibits the transfer of nuclear weapons or control over them. Articles I and II of the NPT clearly stipulate the respective obligations of nuclear-weapon and non-nuclear-weapon states in non-proliferation, which are among the core elements of the Treaty. Specifically, Article I provides “*Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.*”^[16] And Article II provides “*Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transfer or whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices;*

^[16] United Nations Office for Disarmament Affairs, Treaty on the Non-proliferation of Nuclear Weapons (NPT).

and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.”^[17]

NATO’s institutional setup for nuclear sharing is such that in peacetime the nuclear weapons forward-deployed by the US in Europe are controlled, overseen and maintained by the US and that in wartime, after the approval by the NPG and authorization by the US President and UK Prime Minister, the control of these nuclear weapons will be transferred from the US to certain non-nuclear-weapon NATO allies. Then air force pilots of those countries will control these nuclear weapons and be fully responsible for delivering them to the intended targets. As General Earle Wheeler, then Chairman of the Joint Chiefs of Staff of the US, testified before the Senate Armed Services Committee in 1969, *“All weapons in NATO with the exception, of course, of those possessed by the British, are under our custody and control at all times, and would remain, and will remain so until there is a war, if there is a war, at which time the President can authorize the release of these weapons to our allies.”*^[18] In addition, the NATO regularly conducts nuclear weapons delivery training and drills for air force pilots in the above countries in peacetime. The arrangement means:

- **In wartime, the US will transfer, with conditions, the control over nuclear weapons to certain non-nuclear-weapon NATO members.**
- **In peacetime, the US assists certain non-nuclear-weapon NATO members to develop and acquire the ability to take over such control in wartime.**

Thus, NATO’s nuclear sharing arrangement is essentially a special form of nuclear proliferation. With nuclear sharing, the US, a

^[17] Treaty on the Non-proliferation of Nuclear Weapons.

^[18] Military Implications of the Treaty on the Non-Proliferation of Nuclear Weapons, Hearing before the US Senate Armed Services Committee, 91-2, 27 and 28 February 1969, p.23.

nuclear-weapon State party to the NPT, runs counter to Article I while the NATO allies concerned, as non-nuclear-weapon State parties to the NPT, run counter to Article II upon gaining control over US nuclear weapons in wartime.

III. The US and its NATO allies’ arguments for nuclear sharing

With regard to the question whether NATO’s nuclear sharing arrangements run counter to the NPT, the US government gave the following official answer:

The draft treaty “does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling.”^[19]



▲ “Questions on the Draft NPT Asked by US Allies with Answers Given by the United States” (Left) and the Documents Contained Therein (Right).

Source: The Office of the Historian.

^[19] Dean Rusk, “Questions on the Draft Non-Proliferation Treaty Asked by US Allies together with Answers Given by the United States,” NPT Hearings 90–92 (Washington, DC: United States Senate, 1968), pp. 262–63.

The above explanation comes from document *“Questions on the Draft NPT Asked by US Allies with Answers Given by the United States”* (hereinafter referred to as the “Q&A”), contained in a letter from then US Secretary of State David Dean Rusk to President Johnson. The document was submitted to the US Senate on July 9, 1968, when the Senate was holding a hearing on NPT ratification. Available information suggests that this is the earliest unilateral US interpretation of the NPT in public records.

Over the years, government officials of the US and its NATO allies have repeatedly defended NATO’s nuclear sharing on international occasions. For example, in August 2023, Adam Scheinman, President Biden’s Special Representative for Nuclear Non-Proliferation, said in exercising right of reply during the general debate at the first session of the Preparatory Committee for the 11th NPT Review Conference:

“NATO’s nuclear burden-sharing arrangements predate and have always been fully consistent with the NPT. ... concerning such arrangements, the United States maintains full custody and control over their use. ... This was the basis of Articles I and II of the treaty.”^[20]

In August 2022, Thomas Countryman, State Department International Security and Nonproliferation Senior Advisor, said in his right of reply in Main Committee II at the 10th NPT Review Conference:

“NATO’s nuclear burden-sharing arrangements ... were made clear to negotiating delegations and were made public at that time. The fact that the NPT permits such deployments was recognized without question for the first 45 years of the Treaty. It was first called into question at the 2015 Review Conference....”^[21]

^[20] Right of Reply delivered by Ambassador Adam Scheinman at the NPT Preparatory Committee, US Department of State.

^[21] Right of Reply delivered in Main Committee II of the NPT Review Conference, US Department of

Also, in August 2022, Thomas Göbel, German Permanent Representative to the Conference on Disarmament in Geneva, said during the general debate of the 10th NPT Review Conference that the NPT “*was negotiated with NATO’s arrangements in mind*” and that NATO’s nuclear sharing “*has long been accepted and publicly understood by all States Parties to the NPT.*”^[22]

To sum up, the US and its NATO allies defend their nuclear sharing arrangements with the following two arguments:

- **First, those arrangements had existed before the NPT, were made public during treaty negotiation, and have never been questioned during the negotiation and in the first 45 years since the Treaty’s entry into force; and**
- **Second, only in wartime will the US transfer nuclear weapons or control over them to NATO countries, and NPT is no longer legally binding in wartime.**

These two points will be discussed in detail from historical and legal perspectives in the fourth and fifth chapters of this report.

State.

^[22] Right of Reply by the Federal Republic of Germany General Debate Delivered by Ambassador Thomas Göbel, Permanent Mission of the Federal Republic of Germany to the United Nations New York.

IV. Long-standing questions over NATO's nuclear sharing

The US and its NATO allies claimed that their nuclear sharing arrangements do not run counter to the NPT based on the argument that they predated the Treaty, were publicly available during the negotiation process and were not questioned for a long time. Such claims are distortions of international law.

- On the one hand, the US and NATO statement of their nuclear sharing arrangements being predated and not bound by the NPT is in fact a proposition that the Treaty has no retroactivity. This involves the interpretation of the “non-retroactivity of treaties” principle in international law.

The “non-retroactivity of treaties” rule only applies to acts or facts that took place or situations that ceased to exist before the day of the entry into force of the treaty. Article 28 of the Vienna Convention on the Law of Treaties provides: *“Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”* ^[23] To interpret this rule, the United Nations International Law Commission pointed out in its commentary on the relevant draft articles that *“if an act or fact or situation which took place or arose prior to the entry into force of a treaty continues to occur or exist after the treaty has come into force, it will be caught by the provisions of the treaty.”*

^[23] See: <https://www.un.org/en/documents/treaty/ILC-1969-3>.

Non-retroactivity of treaties does not apply to the nuclear-sharing arrangements. Acts of nuclear weapon proliferation under nuclear-sharing arrangements took place before the entry into force of the NPT and continue to occur after the Treaty has come into force. They are therefore caught by the provisions of the NPT since its entry into force. Accordingly, the transfer and receipt of nuclear weapons or control over them between the US and the relevant NATO countries are bound by the NPT after they joined the Treaty.

- On the other hand, the US argument that NATO's nuclear sharing arrangements had not been questioned for a long time is in nature a proposition that other countries have acquiesced in the legality of those arrangements. This involves the interpretation of the "acquiescence" rule in international law.

Acquiescence in international law means that consent or no objection of a State can be inferred from its silence or inaction to the right or fact claimed by another State. According to the judgment of 1984 concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area and the judgment of 2008 concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge of the International Court of Justice as well as the report of the International Law Commission in 2001 on "unilateral acts of States", four conditions must be met to establish acquiescence. First, the acquiescing State should have known or had the opportunity to know the relevant claims by other states. If the other State has not made open its claim in a reasonable way so that the relevant State has no knowledge of the relevant situation, its inaction shall not constitute acquiescence. Second, acquiescence cannot be established if the acquiescing State has an obligation to respond but does not do so, especially when a treaty requires express objection, or when the interests of the State are significantly harmed by the claims of another State and it

fails to respond. Third, the silence or inaction must have lasted a sufficiently long period of time for the relevant State to have the opportunity to respond after gaining knowledge of the relevant situation. Fourth, the State's inaction must not be the result of coercion.

The self-claimed long-term absence of questions over nuclear-sharing arrangements is not sufficient to establish acquiescence or convey any consent by other States. Before and during the drafting of the NPT, the relevant nuclear-sharing arrangements were highly opaque, and the vast majority of States Parties knew little about them and were not able to evaluate the harm or impact on their own interests. Objectively, they did not have the opportunity to learn about the situation. They faced difficulties and had no obligation to object or challenge the arrangements. Moreover, many countries have explicitly opposed the deployment or transit of nuclear weapons in non-nuclear-weapon States at the NPT Review Conferences and by participating in regional nuclear-weapon-free zone treaties. Therefore, there is no such thing as acquiescence to the legality of those nuclear sharing arrangements.

In addition, after consulting and comparing a large number of letters, memos, conversation records, meeting minutes and policy documents in detail, we find that the US and NATO allies' argument of their nuclear sharing arrangements being unquestioned during NPT negotiation and within the first 45 years of the Treaty is also untenable.

1. When the NPT was negotiated and signed, many countries, including some NATO members, were unaware of the details of NATO's nuclear sharing arrangements.

According to sources available, the US did not disclose the details of NATO's nuclear sharing arrangements during the NPT negotiations. Even

some NATO members did not have the full knowledge, let alone non-NATO countries. At that time, even within NATO, members were forbidden to discuss about it among one another, and only bilateral discussions with the US were allowed. For example, the US stopped Canada from debating the deployment of nuclear weapons in its bases in West Germany or the authorization of nuclear weapon use, the details of which Canada had intended to make public. ^[24] For another example, when Sweden signed the NPT in 1968, it thought that other European countries had given up nuclear weapons-sharing plans. ^[25]

2. When signing or ratifying the NPT, only a limited few knew that the US national position was to unilaterally interpret nuclear sharing as not violating the NPT.

Regarding the US unilateral interpretation that nuclear sharing does not run counter to the NPT (the Q&A), when the NPT was opened for signature on 1 July 1968, only the Soviet Union, then NATO members and some individual members of the Eighteen-Nation Disarmament Committee received the position document of the US. The great majority of countries knew nothing about it. ^[26] On 9 July 1968, the Q&A document was submitted together with other relevant documents to the US Senate for consideration to ratify the NPT. It was the earliest publicly available record of the US unilateral interpretation of the NPT. However, the document was generated eight days after the NPT was opened for signature, when the first 56 countries had already signed the Treaty. By keeping the Q&A document in the transcript of the Senate hearing, the US seems to assume that all NPT parties will get the information about and agree with the unilateral interpretation of the US that nuclear sharing

^[24] John Clearwater, *Canadian Nuclear Weapons*, p. 44, Dundurn Press, Toronto, 1998.

^[25] Butcher, Martin. *Questions of Command and Control: NATO, Nuclear Sharing and the NPT*. Berlin: Project on European Nuclear Non-Proliferation, 20 February 1999.

^[26] *Non-Proliferation Treaty, Hearings before the Committee on Foreign Relations, US Senate, Executive H, 90-2, 18 and 20 February 1969, p.340.*

does not run counter to the NPT. As Nicholas Katzenbach, then Undersecretary of State, acknowledged very frankly, it was a well-thought-out strategy of the US government to ensure that other countries would learn of the US view after the NPT was open for signature, otherwise the interests of the US and its allies would be harmed.^[27] The unilateral interpretation of non-violation was not announced in any official government statement, nor written in any relevant statement submitted upon signing of the NPT, which once again shows that the US has no intention whatsoever to formally inform all NPT States parties of its position.

3. After the entry into force of the NPT, the international community has repeatedly voiced doubts, criticisms and objections to NATO's nuclear sharing.

In the first few years of the Treaty, indeed few countries expressed objection to nuclear sharing, mainly because the US remained opaque about the relevant arrangements and deliberately concealed its unilateral interpretation of the NPT. In 1966, then US Secretary of Defense Robert McNamara promised that *“the US would make every effort to explain both its nonproliferation position and NATO nuclear sharing policies, and demonstrate beyond any reasonable doubt that there is no conflict between them.”*^[28] However, the US and its NATO allies have not done this. Other countries simply cannot verify the validity of the US unilateral interpretation, let alone agreeing or opposing the specific arrangements deliberately concealed by the US.^[29]

^[27] Evans Gerakas, David S. Patterson, and Carolyn B. Yee (eds.) *“Arms Control and Disarmament”*, Foreign Relations of the United States, 1964-1968. Volume X. United States Government Printing Office, Washington, 1997, p.574.

^[28] US-Congress, Joint Committee on Atomic Energy: Nonproliferation of Nuclear Weapons, Washington 1966, p.77.

^[29] Non-Proliferation Treaty, Hearings before the Committee on Foreign Relations, US Senate, Executive H, 90-2, 18 and 20 February 1969, p.364.

However, as States parties became gradually aware of the incompatibility of NATO's nuclear sharing arrangements with Articles I and II of the NPT, more and more doubts have been raised in the NPT review process. As early as in 1985, in the final outcome document adopted by consensus at the 3rd NPT Review Conference, *“the Conference agreed that the strict observance of the terms of Articles I and II remains central to achieving the shared objectives of preventing under any circumstances the further proliferation of nuclear weapons and preserving the Treaty's vital contribution to peace and security, including to the peace and security of non-Parties.”*^[30] Read in conjunction with the follow-up process, this paragraph actually reflected the early doubts of NPT parties over NATO's nuclear sharing arrangements.

At the 1995 NPT Review and Extension Conference, many countries raised severe concerns over whether NATO's nuclear sharing conformed to Articles I and II of the NPT. For example, Mexico asked NATO to explain and clarify whether its nuclear sharing arrangements may violate the NPT; Nigeria questioned whether non-nuclear-weapon allies of a nuclear-weapon state would acquire nuclear weapons in wartime; Tanzania believes that as the deployment of nuclear weapons in non-nuclear-weapon states may be interpreted as the transfer of nuclear weapons. In the subsequent debate, although NATO countries insisted on their non-violation positions and asked the Review Conference to support their nuclear sharing arrangements,^[31] more non-NATO countries expressed completely different views and asked the Main Committee I of the Review Conference to include in its report that *“The Conference notes with grave concern the nuclear collaboration among certain nuclear-weapon States and their collaboration with certain States non-parties to the Treaty, as well as the transfer of nuclear weapons and*

^[30] NPT/CONF.III/64/1.

^[31] NPT/CONF.1995/MC. I/1,9qua.

their control to States parties, under regional security alliances and arrangements. The Conference is convinced that such acts run counter to the spirit and letter of the Treaty, in particular articles I and II, and give rise to proliferation of nuclear weapons in all their aspects.”^[32]

In the subsequent NPT review process, the parties concerned further expressed their doubts and criticisms about NATO’s nuclear sharing, and urged the organization to stop those arrangements immediately.

For the 6th Review Conference in 2000, the Non-Aligned Movement States Parties to the NPT, in the group’s working paper, called upon the nuclear-weapon States parties to the NPT to “*reaffirm their commitments to the fullest implementation of Articles I and II*” and to “*refrain from, among themselves, with non-nuclear weapons states, and with States not party to the Treaty, nuclear sharing for military purposes under any kind of security arrangements.*”^[33] South Africa expressed its serious concern over the nuclear proliferation impact of NATO’s eastward expansion, stressing that it will lead to increase of non-nuclear-weapon States participating in nuclear training, planning and decision-making and adding an element of nuclear deterrence to their national defense policies.^[34] The New Agenda Coalition (NAC)^[35] pointed out that any loopholes in treaty interpretation that may allow nuclear sharing must be closed. It also emphasized that all provisions of the NPT are binding on all states parties at any time and under any circumstances.^[36] Egypt

^[32] NPT/CONF.1995/MC. I/1,9bis.

^[33] Working Paper Presented by the Members of the Movement of the Non-Aligned Countries, Parties to the Treaty, 1998 Preparatory Committee for the 2000 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons, 28 April 1998.

^[34] Statement by the Permanent Representative of South Africa, Ambassador K. J. Jele, to the First Preparatory Committee Meeting for the Year 2000 Review Conference of the Treaty On The Non-Proliferation of Nuclear Weapons, 8 April 1997, New York.

^[35] The NAC was born in June 1998. It is composed of Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden. It aims to foster international consensus to promote the nuclear disarmament process.

^[36] New Agenda Statement, para. 13, Ambassador Luiz Tupy Caldas de Moura of Brazil, 12 May 1999.

stressed that NATO's nuclear sharing arrangements had seriously called into question whether some NATO members abide by Articles I and II of the NPT, and proposed that the Review Conference state in clear and unambiguous terms that *“Articles I and II allow for no exceptions whatsoever, and are binding ... in times of peace as well as in times of war.”*^[37]

For the 7th NPT Review Conference in 2005, the NAC again submitted working papers reiterating that *“each article of the NPT is binding on the respective States parties at all times and in all circumstances. It is imperative that all States parties be held fully accountable with respect to the strict compliance of their obligations under the Treaty.”*^[38] Similar concerns have been written in the chairman's summary of the Preparatory Committee meeting.^[39] Cuba noted that the US and NATO had, through the latter's new Strategic Concept, accorded to nuclear arms a fundamental role in their military doctrine and thus posed a serious peril to non-nuclear-weapon States.^[40]

For the 8th NPT Review Conference in 2010, Iran made it clear that nuclear sharing arrangements, especially the deployment of nuclear weapons in NATO non-nuclear-weapon members in Europe violated Article I,^[41] and that countries hosting the US nuclear weapons in Europe or the Far East of Asia were also in clear violation of Article II of the NPT.^[42] Indonesia pointed out that NATO's new strategic concept, containing policies for the retention of nuclear weapons, contradicted the NPT nuclear disarmament obligations, and called for the removal of

^[37] Statement by Ambassador Zahran, before the Third Session of the PrepCom for the 2000 NPT Review Conference, New York, 12 May 1999.

^[38] NPT/CONF.2005/PC. I/WP.1; NPT/CONF.2005/PC. II/16; NPT/CONF.2005/PC.III/11.

^[39] NPT/CONF.2005/PC.III/WP.27.

^[40] NPT/CONF.2005/PC. II/WP.10.

^[41] NPT/CONF.2010/PC. I/SR.4.

^[42] NPT/CONF.2010/PC. II/SR.3.

tactical nuclear weapons from the territories of non-nuclear-weapon States that were members of NATO.^[43] Egypt and some other countries call on States that are part of regional alliances which include nuclear-weapon States to report as a significant transparency and confidence-building measure, on steps taken or future steps planned to reduce and eliminate the role of nuclear weapons in collective security doctrines.^[44]

At the 9th NPT Review Conference in 2015, the representative of the Community of Latin American and Caribbean States said in his speech that “*countries that had signed up to extended nuclear deterrence policies as part of military alliances based on nuclear weapons should implement policies that would enable them to eliminate their reliance on the nuclear weapons of other States, in accordance with the objectives of the Charter of the United Nations and their obligations under the Treaty.*”^[45] Non-Aligned Movement States Parties to the NPT remained deeply concerned about the military and security doctrines of the nuclear-weapon States and of the NATO, which attempted to justify the use or threat of use of nuclear weapons on the basis of the irrational concept of nuclear deterrence and nuclear military alliances.^[46] Russia stressed that Articles I and II of the Treaty were violated in the framework of collective nuclear missions of NATO, during which military personnel from non-nuclear States received nuclear-weapon-related training and participated in the process of nuclear planning. Russia called on the US and relevant NATO members to comply with the Treaty and cease their violations.^[47] Venezuela said that it was “*now time for non-nuclear-weapon States that depended on the nuclear security policies of other States to take the necessary steps towards the definitive*

^[43] Ibid.

^[44] NPT/CONF.2010/WP.8.

^[45] NPT/CONF.2015/SR.12.

^[46] NPT/CONF.2015/SR.1.

^[47] NPT/CONF.2015/SR.2.

elimination of nuclear weapons; those States should refuse to be part of a security doctrine that protected them through the use and threat of use of nuclear weapons, and should ban the movement of such weapons on their land and in their airspace and maritime areas.”^[48]

For the 10th NPT Review Conference in 2022, South Africa pointed out that *“the nuclear-weapon States did not bear the sole responsibility for reducing the role of such weapons in security strategies: States under the nuclear umbrella were encouraging the continued possession of nuclear weapons by advocating the supposed benefits of deterrence.”*^[49] Kenya urged nuclear-weapon States and non-nuclear-weapon States under a nuclear umbrella to adopt new defense and security doctrines that did not include nuclear weapons. Iran pointed out that a few non-nuclear-weapon States, such as Germany, violated the spirit and letter of the NPT by allowing nuclear weapons to be stationed in their territories.^[50] Peru emphasizes that *“The expansion of military alliances, so-called ‘nuclear alliances’, had undermined commitments under the Treaty to reduce dependence on nuclear weapons and had generated more distrust and insecurity, thereby escalating conflicts.”*^[51] Ecuador called on non-nuclear-weapon States that were covered by extended nuclear deterrence policies through military alliances to reframe their security policies.^[52] The Non-Aligned Movement States Parties to the NPT deplored the strategic concept for the defense and security of the NATO members, which are based on the use or threat of use of nuclear weapons and which maintain unjustifiable concepts of security based on promoting and developing military alliances and nuclear deterrence policies.^[53]

^[48] NPT/CONF.2015/SR.7.

^[49] NPT/CONF.2020/SR.3.

^[50] NPT/CONF.2020/SR.6.

^[51] NPT/CONF.2020/SR.7.

^[52] NPT/CONF.2020/PC.III/SR.6.

^[53] NPT/CONF.2020/PC.III/WP.15.

At the first session of the Preparatory Committee for the 11th NPT Review Conference in 2023, the Non-Aligned Movement States Parties to the NPT made it clear that the nuclear-weapon States and non-nuclear-weapon States participating in any horizontal proliferation of nuclear weapons and nuclear weapon-sharing arrangements violated their respective non-proliferation obligations in Articles I and II. The group urged the countries concerned to put an end to nuclear weapon-sharing arrangements under any circumstances and any kind of security arrangements in times of peace and in times of war.^[54] Egypt believed that the nuclear-sharing arrangements were not fully compliant with the NPT and should be explicitly revoked and abandoned.^[55] Brazil pointed out that positive military guarantees were avidly sought out by some countries, be it through participation in nuclear military alliances or through so-called nuclear-sharing arrangements, in obvious contradiction with Articles I and II of the NPT.^[56] Indonesia noted with concern a notable surge in countries expressing aspirations to become members of military and nuclear sharing alliances, introducing new complexity into disarmament landscape.^[57] Malaysia argued that increasing the role of nuclear deterrence for the defense of a select group of States had a negative impact on nuclear non-proliferation efforts, undermining security for all, and demanded to reduce and eliminate reliance on nuclear weapons in national and collective security doctrines and policies, including in the framework of military alliances.^[58]

^[54] Statement by The Delegation of the Republic of Indonesia on behalf of the Non-Aligned Movement States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons At the First Session of The Preparatory Committee for the 11th Review Conference of the Treaty on The Non-Proliferation of Nuclear Weapons, Vienna, August 2023. <https://meetings.unoda.org/meeting/67442/statements>.

^[55] Statement by the Delegation of the Arab Republic of Egypt. The 1st Preparatory Committee for the 11th NPT Review Conference, Vienna, 31 July - 11 August 2023. <https://meetings.unoda.org/meeting/67442/statements>.

^[56] Statement by the Delegation of Brazil Special Representative of Brazil to the Conference on Disarmament, Vienna, 31 July – 11 August 2023. <https://meetings.unoda.org/meeting/67442/statements>.

^[57] Statement by H.E. Mr. Febrian A. Ruddyard Alternate Head of Delegation of the Republic of Indonesia at the General Debate of the First Preparatory Committee Meeting For the 2026 Review Conference of the Parties to The Treaty on the Non-Proliferation of Nuclear Weapons, Vienna, 1 August 2023. <https://meetings.unoda.org/meeting/67442/statements>.

^[58] Statement by Representative of Malaysia at the First Session Of The Preparatory Committee for The



▲ In July and August 2023, the first session of the Preparatory Committee for the 11th Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons was held in Vienna, Austria. Source: Website of the Permanent Mission of China to the United Nations and Other International Organizations in Vienna.

The above facts fully show that since the entry into force of the NPT, the incompatibility of NATO nuclear sharing with Articles I and II of the Treaty has aroused widespread concern. The international community has always questioned, criticized and opposed NATO's nuclear-sharing arrangements. The US and its NATO allies' claim that those arrangements had not been called into question in the first 45 years of the Treaty is obviously untenable.

2026 Review Conference Of The Parties to The Treaty on The Non-Proliferation of Nuclear Weapons, Vienna, 31 July-11 August 2023. <https://meetings.unoda.org/meeting/67442/statements>.

V. NPT remains legally binding in wartime

The United States also alleged that it would transfer nuclear weapons or control over them to NATO allies only in times of war when the NPT will no longer be legally binding. **However, there is no basis for this argument under international law. The proposition that the NPT expires in a war or armed conflict is not tenable.**

The existence of a war or armed conflict does not *ipso facto* mean the expiration, termination or suspension of the implementation of a treaty. At present, there is no specific provision in international law on the impact of a war or armed conflict on treaties. However, State practices, the *Draft Articles on the Effects of Armed Conflicts on Treaties* adopted by the International Law Commission in 2011 and the resolution on the *Effects of Armed Conflicts on Treaties* adopted by the Institute of International Law in 1985 indicate that, **the relevant rule in customary international law is that an armed conflict does not *ipso facto* terminate or suspend the implementation of treaties**, especially when: (1) The treaty expressly provides for its implementation in wartime; (2) The nature, aim and purpose of the treaty indicate its implementation in wartime. This is particularly true for those multilateral law-making treaties that establish general rules of international law which fulfill the needs of international community as a whole; (3) Obligations stipulated in the treaty are also obligations under other international laws, including customary international law; (4) An aggressor state may not withdraw from the treaty, or terminate or suspend the implementation of it out of its own interest. In exception to the aforementioned rules, **when the continued implementation of a treaty conflicts with its legitimate exercise of the right to self-defense or implementation of UN Security Council resolutions, a State may suspend the implementation of the treaty in**

whole or in part.

- **The purposes and nature of the NPT require it to remain valid in wartime.**

First of all, to fit its purpose, the NPT must apply in wartime. The preamble of Treaty itself clearly identifies a need to make every effort to avert the danger of a nuclear war. In the second paragraph of the second page of Annex I of the Final Document of the 3rd Review Conference in 1985, the Conference agreed that the strict observance of the terms of Articles I and II remains central to achieving the shared objectives of preventing “under any circumstances” the further proliferation of nuclear weapons, which is a clear indication that the NPT applies in both peacetime and wartime.

Second, the NPT is a multilateral law-making treaty, which applies in wartime. The Treaty establishes general international rules prohibiting nuclear-weapon proliferation, which are in nature permanent legal rules. The international community’s need for these rules does not disappear or change due to the outbreak of a war. If the NPT fails in wartime, the risk of a nuclear war will increase.

Third, NPT provisions have become customary international law in the field of non-proliferation. The NPT has been in force for 54 years and has 191 States parties, and its provisions have been universally accepted by the international community. During the negotiation of the NPT, the UN General Assembly adopted nuclear non-proliferation resolutions, such as Resolution 1665, 2028, 2149 and 2153. At UN General Assembly sessions and all NPT review conferences, the intentional community have been urging India, Pakistan, Israel and the DPRK to join or return to the NPT. The international non-proliferation regime based on the NPT is a vital part

of the post-World War II international security order. Even if the US and its NATO allies may have doubts on the validity of the NPT in wartime, they still have the obligation to abide by the customary international law embodied in the NPT.

- **The performance of NPT obligations does not involve the exception of treaty termination or suspension of the implementation in an armed conflict.**

While the exercise of a State's right to self-defense may involve the use of its own nuclear weapons, it generally does not involve the transfer of nuclear weapons to other countries. And there is no Security Council resolution the implementation of which would require a State to transfer nuclear weapons or control over them to other countries in peacetime or wartime. There is no evidence suggesting that the performance of their NPT obligations in wartime by the US and other relevant NATO countries would obstruct the lawful exercise of their right to self-defense or the implementation of Security Council resolutions.

VI. Risk of nuclear sharing arrangement in the Asia Pacific

In recent years, the risk of nuclear sharing spreading to the Asia-Pacific region has emerged as some people in Japan and the Republic of Korea (ROK) want to follow the suit of NATO and seek nuclear sharing with the US. The development is disturbing.

- **Japan clamors for nuclear sharing with the US, its position on the “Three Non-Nuclear Principles” wavers.**

On 27 February 2022, former Japanese Prime Minister Shinzo Abe stated in public that in view of the situation between Russia and Ukraine, Japan should discuss about an arrangement similar to NATO’s nuclear sharing instead of regarding it as a taboo.^[59] His statement immediately became the focus of Japanese society and triggered discussions among Japanese political circles and the general public. Tatsuo Fukuda, Chairman of the General Council of the ruling Liberal Democratic Party (LDP), expressed his support for Abe's remarks at a press conference, saying that Japan should not avoid any related discussion.^[60] Sanae Takaichi, head of the LDP's government investigation unit, expressed the same position, saying that in an emergency, exceptions should be allowed to the third of Japan’s “Three Non-Nuclear Principles.”^{[61][62]} Right-wing opposition party Japan

^[59] Abe reiterates nuclear-sharing discussion is necessary, March 3, 2022 19:43 JST, NIKKEI ASIA, <https://asia.nikkei.com/Politics/Abe-reiterates-nuclear-sharing-discussion-is-necessary>.

^[60] Nuclear sharing, a taboo or unavoidable reality? Japan parties intensify debate, March 2, 2022, Mainichi Japan, <https://mainichi.jp/english/articles/20220302/p2a/00m/0na/016000c>.

^[61] Referring to Japan’s commitment to not possess, produce or permit the introduction of nuclear weapons. They were put forward by then Japanese Prime Minister Satō Eisaku in December 1967, adopted at the plenary session of the Japanese National Diet in November 1971, and became the basic policy of the Japanese government on nuclear weapons.

^[62] Japan ruling party to debate contentious nuclear sharing arrangement, KYODO NEWS, Mar 14, 2022, <https://english.kyodonews.net/news/2022/03/e2c69f31b0eb-japan-ruling-party-to-debate-contentious-n>

Innovation Party (JIP) submitted a proposal to the Japanese Ministry of Foreign Affairs, demanding to revisit the three principles and engage the US in discussions on a nuclear-sharing arrangements.^[63] In 2020, the Japanese government removed the “Three Non-Nuclear Principles” from the national report submitted to the 10th NPT Review Conference^[64] and was forced to clarify upon doubts and questions from the international community.^[65]

Japan has long posed as the victim of nuclear weapons and babbled about “complete destruction of nuclear weapons” at NPT Review Conferences and on other occasions. However, it openly opposed potential US abandonment of the nuclear declaratory policy based on the first use of nuclear weapons.^[66] Japan has also a declared opposition to nuclear proliferation, but it has always enjoyed the US nuclear umbrella and now starts to clamor for sharing the US nuclear weapons.

- **The US strengthens extended deterrence for the ROK and seeks a nuclear deterrence coalition.**

During his election campaign, the current ROK President Yoon Suk-yeol repeatedly demanded the US to redeploy tactical nuclear weapons in ROK or to have nuclear sharing with the latter.^[67] In January 2023, President Yoon Suk-yeol noted doubts over the credibility of US extended

uclear-sharing-arrangement.html.

^[63] Policy Proposals Ishin Hassaku (Eight-Point Innovation Plan) 2022, 16 June 2022, Japan Innovation Party, <https://o-ishin.jp/en/pdf/ishinhassaku2022.pdf>.

^[64] Hypocrisy or True Evil: Seven Questions about Japan’s nuclear sharing, CINIS, 2 June 2022. See: <https://www.cinie.com.cn/zhzlghyjzy/yjbg/1224556/index.html>.

^[65] Japan publicly reiterated the “Three Non-Nuclear Principles” and vowed not to seek “nuclear sharing”. See: http://new.fmprc.gov.cn/web/wjb_673085/zzjg_673183/jks_674633/jksxwlb_674635/202208/t20220809_10737755.shtml.

^[66] Citizens urge 8 parties to back U.S. no-first-use nuke policy, 8 September 2021 at 18:08 JST, the Asahi Shimbun, <https://www.asahi.com/ajw/articles/14436105>.

^[67] Yoon says he will request redeployment of U.S. tactical nukes in case of emergency. Yonhap News Agency. September 22, 2021.

deterrence, asked for redeployment of the US nuclear weapons or nuclear sharing, and proposed to otherwise consider a ROK nuclear arsenal.^[68]

On 26 April 2023, US President Biden and ROK President Yoon met in Washington and issued the Washington Declaration. The two sides created a Nuclear Consultative Group to discuss planning, application and decision-making issues related to the US nuclear weapons and agreed to conduct inter-agency tabletop nuclear contingency simulation and joint nuclear deterrence training activities. A US ballistic missile submarine visited the Korean Peninsula after more than 40 years of absence.^[69] These are considered major moves by the US to substantively strengthen its extended deterrence for the ROK. Although the US nuclear weapons have not been routinely deployed to South Korea, the two countries now share the risks, benefits and responsibilities of nuclear deterrence through the relevant information sharing, planning consultation, joint training and crisis communication mechanisms. A nuclear deterrence alliance similar to NATO is already in the making.

Replicating in or spreading nuclear-sharing arrangements to the Asia-Pacific region in any way is both dangerous and in serious violation of the NPT. Therefore, it must be explicitly opposed by the international community.

^[68] In a First, South Korea Declares Nuclear Weapons a Policy Option. The New York Times. 12 Jan. 2023.

^[69] Washington Declaration, the White House, 26 April 2023.

VII. Conclusions and recommendations

To sum up, NATO's nuclear sharing is severely inconsistent with the provisions of Articles I and II of the NPT. Over the years, the international community has raised serious questions about the arrangements with various criticisms and oppositions. It has been their belief that nuclear sharing undermines the international nuclear non-proliferation regime. It is very dangerous and irresponsible for the US to unilaterally interpret the NPT as losing its legal binding force in wartime.

As a product of the Cold War and a tool of bloc confrontation, NATO's nuclear sharing has long been out of date and should be abandoned upon the end of the Cold War. The US and its NATO allies should strictly fulfill their obligations under the NPT in full, especially Articles I and II, by inter alia avoiding any additional sharing arrangement in Europe and abandoning the practice as soon as possible. This is indispensable for reinforcing the NPT regime.

The spread of nuclear sharing to other regions, especially the Asia Pacific, is bound to further damage the NPT regime and bring more risks and harm to international and regional security. In this regard, the international community must be highly vigilant and resolutely resist the tendency.

The vast number of States parties are recommended to make fully use of the 11th NPT review cycle and explore various means, including through the outcome documents, to make it clear that all States parties must strictly abide by all the provisions of the Treaty and to reaffirm that the Treaty is legally binding at all times and in all circumstances, in both peacetime and wartime. That will be essential for maintaining the

authority, integrity and effectiveness of the international nuclear non-proliferation regime, centering on the NPT, and achieving the common goal of completely eliminating nuclear weapons and preventing further nuclear proliferation.