

THE NORTH ATLANTIC TREATY ORGANIZATION (NATO)

Introductory Remarks

NATO's Member States have recognized the capacity of various NATO entities to enter into international instruments, including non-legally binding instruments (NLBIs). As in other complex international organisations, practices concerning NLBIs vary depending on a variety of factors to ensure they are tailored to meet the needs of the Organization, including the mandate and function of the entity concerned, the environment in which they operate, and the counterparty.

Accordingly, the following observations principally pertain to the current practice and approach of the International Staff of NATO regarding NLBIs. They do not seek to address other parts of NATO's civilian and military structures and are provided without prejudice to the views and practices within those structures, and those of individual Allies.

NATO's International Staff uses NLBIs to engage on a wide range of subjects with a variety of actors, internal and external to NATO; it does so through an approach to NLBIs that is flexible in procedure and substance. International organisations often operate in complex, fast-moving and multi-actor environments. In that setting, decentralised negotiation and implementation of NLBIs, supported by legal review where appropriate, provides a more responsive and effective model than highly centralised procedures.

A. SUBSTANTIVE ASPECTS

(...)

For International Organisations:

23. If such a process exists, please describe the regular process of formal assessment of non-legally binding agreements within your organisation.

NATO's International Staff follows a decentralised and context-sensitive approach to the assessment, negotiation and conclusion of NLBIs. Such approach reflects the diverse mandates of its Divisions and Independent Offices, and the specific contexts in which they engage with entities external to NATO.

The lead in initiating and shaping an NLBI will generally be with the NATO Division or Office responsible for the policy or activity in question. The Office of Legal Affairs supports those efforts by providing legal advice and/or drafting assistance when appropriate, reviewing the instrument with particular attention to its intended non-legally binding character, terminology and practical effects.

Measures to enhance institutional visibility over existing NLBIs, including knowledge and information management solutions, are underway

(...)

For International Organisations:

41. How would you describe the main differences between resolutions/declarations adopted by IOs and non-legally binding agreements concluded by IOs from a legal and practical perspective?

From a legal and practical perspective, there is a distinction between statements of the policy position of an international organisation and/or its Member States, versus NLBIs concluded between an international organisation and one or more external entities.

At NATO, the term “resolution” is not generally used for documents adopted by its principal decision-making body, the North Atlantic Council. Common denominations include decisions, declarations, communiqués, statements, strategic concepts, strategies, policies, action plans, concepts, and terms of reference. Documents decided in the North Atlantic Council are expressions of internal Alliance decision-making and collective political will of the Allies. They

may guide NATO's work, set priorities, endorse policies, establish mandates or authorities, and provide political direction to NATO bodies and structures.

In contrast, while the authority for their negotiation and conclusion may derive from NATO's internal decision-making processes, NLBIs are tools for structuring NATO's cooperation with other entities in non-legally binding terms. NATO uses NLBIs in its cooperation with State actors (including Allies and non-member States) or their public authorities, and with other international organisations. In some cases, NATO may also use NLBIs to engage with non-State actors (industry, academia, research entities, civil society, etc.) for purposes such as dialogue, participation in events, education, and training. NLBIs may be the preferred tool, inter alia, where cooperation is political or programmatic; where cooperation is exploratory or subject to evolving policy decisions; and where an activity can be implemented under existing legal frameworks. NLBIs may also be concluded between different NATO entities in order to define roles and responsibilities, outline procedures for cooperation, or otherwise address programmatic or systematic cooperation.

42. Do you attribute any law-making effect to non-legally binding agreements? Or do you see them as mere status and administrative arrangements for the purposes of international organisations?

In general, NLBIs would not be regarded as having any law-making effect (direct or indirect), as they are not intended to create legal rights or obligations under international law. The fact that an NLBI may be authorised or endorsed through NATO's internal processes (see our reply to Question 41) does not imply an intention to be bound under international law.

At the same time, NLBIs concluded by NATO often go beyond "mere status and administrative arrangements". Serving a broader range of functions, such NLBIs may establish frameworks for cooperation, political dialogue, consultation, information exchange, capacity-building, logistical coordination, operational support, or engagement with a variety of international actors. They may also form the basis for committing or receiving funds