



IALANA Deutschland e.V. – Vereinigung für Friedensrecht
Deutsche Sektion der International Association Of Lawyers Against Nuclear Arms

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To Chancellor
Dr. Angela Merkel
Bundeskanzleramt
Willy-Brandt-Straße 1
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Berlin, 20th January 2021

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GESCHÄFTSFÜHRER:

Lucas Wirl, Berlin

Dear Dr. Merkel,

we hereby address you and all members of the Federal Government as well as the members of the German Bundestag with an urgent appeal:

Sign and ratify the Treaty on the Prohibition of Nuclear Weapons!

Stop the deployment of the new US American B 61-12 atomic bombs at the German Air Force base in Büchel and the resulting new dangerous nuclear armament on German soil!

Refrain from the planned acquisition of 45 US American F 18 fighter jets as nuclear weapon carriers for the Tactical Air Force Wing 33 of the Bundeswehr!

We are currently at an important crossroads in the dispute over nuclear armament on German soil. For one, on 24 October 2020 the 50th state ratified the Treaty on the Prohibition of Nuclear Weapons, which will come into force on 22 January 2021. This leaves the door wide open for a new dynamic aimed at abolishing all nuclear weapons.

At the same time, the German government still refuses to sign the treaty banning nuclear weapons and has instead once again taken part in a military maneuver in October 2020, during which, under the name of Steadfast Noon, nuclear war was trained. The central issue is the deployment of 46 Tornados of the Tactical Air Force Wing 33 in Büchel within the framework of „nuclear sharing“. According to a Frankfurter Allgemeine Zeitung correspondent's report from the NATO headquarters in Brussels, the use of nuclear weapons against targets in Russia was exercised.

Ehrenpräsident der International Association Of Lawyers Against Nuclear Arms

Prof. Dr. Dr. h.c. mult. Christopher Gregory Weeramantry

(17. November 1926 – 5. Januar 2017)

Vizepräsident des Internationalen Gerichtshofs in Den Haag i. R.

Träger des UNESCO Prize for Peace Education 2006 / Träger des Right Livelihood Award 2007

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THE USE OF NUCLEAR WEAPONS IS BECOMING INCREASINGLY PROBABLE

With the trade war that has now been ignited and the deep economic crisis that is spreading worldwide as a result of the COVID-19 pandemic, new armed conflicts threaten to escalate into a war fought with nuclear weapons. Territorial conflicts in the South China Sea, in the Mediterranean between Turkey, Greece and Cyprus and in Nagorno-Karabakh are of current concern. During a debate in the Bundestag on June 25, 2008, Eckart von Klaeden, the foreign policy spokesman of the CDU/CSU faction at the time, had already described a possible armed conflict between Israel and Iran as a scenario for the use of nuclear weapons by Germany against Iran. According to American journalist Bob Woodward, US President Trump's former Secretary of Defense, James Mattis, was involved in actual preparations for the use of nuclear weapons against North Korea.

New nuclear weapons, such as the B 61-12 bomb now being developed in the USA, which can be directed towards a target like a guided missile and whose explosive effect can be regulated, lower the inhibition threshold for using them in armed conflict. NATO's latest military plans envision integrating the use of low-yield nuclear weapons into conventional warfare on the battlefield. Those who consistently practice the use of nuclear weapons and threaten to do so will ultimately give the order to use them.

The political change in the United States is also an occasion to realign transatlantic relations between Germany and the United States, in accordance with the peace commandment of the German Constitution, the Charter of the United Nations, and the rules of international humanitarian law.

THE USE OF NUCLEAR WEAPONS AND THE THREAT OF THEIR USE VIOLATE INTERNATIONAL HUMANITARIAN LAW

The use of nuclear weapons by German soldiers would be illegal due to the resulting violation of various rules of international humanitarian law. This is the conclusion of the landmark advisory opinion of the International Court of Justice (ICJ) of the United Nations, given upon request of the General Assembly of the UN on 8 July 1996. According to the ICJ, the threat or use of force by means of nuclear weapons generally violate the principles and rules of international law applying to armed conflicts. The effects of such weapons do not distinguish between combatants and civilians, cause unnecessary suffering, damage the livelihoods of people and the environment, and affect nations not involved in the conflict.

In this context, the Federal Government always refers to the fact that the ICJ also stated in its advisory opinion that, in view of the present situation under international law and in view of the factual material available to it, it could not definitively decide the question whether the threat or use of nuclear weapons in an extreme situation of self-defense in which the existence of a state was at stake was lawful or unlawful.

It had been argued within the circle of nuclear weapon states that the use of nuclear weapons in an extreme self-defense situation must be allowed at least if the nuclear weapons used are „clean“ nuclear weapons with low explosive power. The court's finding in this regard was owed to the fact that none of the states advocating the

lawfulness of the use of nuclear weapons had specified in the proceedings what the exact conditions of such an exceptionally admissible use would be and what characteristics allegedly „clean“ nuclear weapons could have. As then-president of the ICJ, Mohammed Bedjaoui, explained in a review of the advisory opinion, the court merely stated that it lacked information on the possibility of the development of „clean“ nuclear weapons as claimed by the nuclear weapon states. According to Bedjaoui, the release of radioactive radiation by the explosion of nuclear weapons is the typical characteristic of nuclear weapons in violation of international humanitarian law. „Clean“ nuclear weapons that do not cause radioactive radiation thus were no longer nuclear weapons.

It remains decisive, therefore, that the ICJ has emphasized in the reasons for its advisory opinion that self-defense is only permitted with weapons whose use does not contradict the principles and rules of international humanitarian law; the ICJ has declared that the right to self-defense is limited by international humanitarian law according to Article 51 of the UN Charter, „whatever means of force are used.“ Therefore, self-defense by means of nuclear weapons is fundamentally forbidden under international law, as, according to the current state of weapons technology, these weapons do not distinguish between civilians and combatants, cause unnecessary suffering, particularly through their radioactive radiation, and affect neutral states across borders.

In addition, the express declaration of the ICJ that it did not make a decision on the use of nuclear weapons in a specific scenario under hitherto unknown conditions cannot lead to the conclusion that it answered this question in the sense that the use in such a scenario is admissible under international law. To leave a question open does not mean to affirm it.

Accordingly, the rules of international humanitarian law must also be observed in an act of self-defense to ward off an acute attack in accordance with Art. 51 UN Charter and thus also apply in every conceivable case for the alliance in accordance with Art. 5 of the NATO Treaty.

The same applies to the B 61-12 bombs. They are not „clean“ nuclear bombs. Their use would be a violation of international humanitarian law and a grave war crime. Their deployment on German soil must be prevented!

THE DEPLOYMENT OF NUCLEAR WEAPONS BY THE USA AND THEIR USE BY GERMAN SOLDIERS VIOLATE GERMANY'S OBLIGATIONS UNDER THE NON-PROLIFERATION TREATY

The transfer of US atomic bombs by the USA to the soldiers of the Bundeswehr in the event of the use of a nuclear weapon is in violation of Art. II NPT. This states:

“Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly;...”

According to this unambiguous wording of the treaty, the acquisition of atomic bombs by German soldiers, as trained just in October 2020 during the „Steadfast Noon“ exercise, would be contrary to the treaty. Through its ratification under Article 59 para. II of the German Constitution (GG), the treaty is at the same time

part of federal law. The members of the Federal Government have sworn an oath of office to ensure that it is observed. In addition, the observance of the rules of the NPT corresponds to the binding of state authority by law and justice according to Art. 20 para. III GG.

Objections raised by the German government to this are not viable.

According to a „briefing note“ issued by the Scientific Service of the German Bundestag WD 2 - 3000 - 147/19 (January 7, 2020), which also reflects the view of the federal government, this prohibition of the NPT was not intended to prevent nuclear sharing, as it involves a „two-man rule“ which stipulates that nuclear weapon states and the states in whose territory nuclear weapons are deployed may only decide jointly on their use. A transfer of nuclear weapons in the sense of Art. II NPT would thus not constitute a proliferation. No more is said on the matter. It is disregarded, however, that this interpretation contradicts the clear wording and the meaning and purpose of the provision. By handing over the nuclear weapons, the soldiers of the Bundeswehr and thus the government of the Federal Republic of Germany come into their direct possession, even if the United States should retain a „second key“ and thus the indirect possession through a reservation of use. Yet this is precisely the process described in the treaty’s provision. The argumentation therefore represents no more than a flimsy evasion.

The second argumentation of the German government is based on an alleged reservation of the German government declared when signing the treaty. This was to be taken from the „Rusk Letter“ of July 9, 1968 to President Johnson and the U.S. Senate. According to this letter, the obligations under the NPT would no longer apply if „a decision to wage war is taken“. This reservation violates the meaning and purpose of the treaty and is therefore invalid from a substantive law perspective according to Art. 19 Vienna Convention on the Law of Treaties (VCLT). This interpretation would imply that any nuclear weapons state in any armed conflict would be entitled to equip any of its allies with nuclear weapons. However, this is precisely what the treaty seeks to prevent. Incidentally, it already lacks formal legality under Article 23 of the VCLT, as the „Declaration of Interpretation“ was not communicated to the other 190 states party to the NPT.

NO GERMAN UNITY WITHOUT RENOUNCING NUCLEAR WEAPONS

Without compliance with the obligations of the NPT and the consistent renunciation of NBC weapons, German reunification with the 2+4 Treaty of 1990 would not have come to pass 30 years ago. According to the description by Martin Ney, then head of the legal department of the German Foreign Office and international law advisor to the German government, in his essay „The 2+4 Process from the Legal Advisor’s Perspective“ in the *Journal for Foreign Public Law and International Law (ZaöRV, 75 2015, 619-633)*, the 2+4 Treaty was hotly disputed within the Supreme Soviet. The idea that the territory of the former GDR should belong to NATO in the future was a difficult concept to the former Soviet Union. The breakthrough in the negotiations came only with Foreign Minister Genscher’s speech at the Fourth Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons on August 22, 1990, in which he confirmed this renunciation and its explicit inclusion in Art.3 para. 1 of the 2+4 Treaty.

It states: *“The Governments of the Federal Republic of Germany and the German Democratic Republic reaffirm their renunciation of the manufacture and possession of and control over nuclear, biological and chemical weapons. They declare that the united Germany, too, will abide by these commitments. In particular, rights and obligations arising from the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 will continue to apply to the united Germany.”*

The deployment of U.S. nuclear weapons and their use by the German Air Force’s Tactical Air Wing 33 would also breach the treaty by which Germany has regained its unity and unrestricted sovereignty.

TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS (TPNW) A DECISIVE STEP TOWARDS FULFILLING THE DISARMAMENT OBLIGATION UNDER ART. VI NPT

On 24 October 2020, the fiftieth state ratified the „Treaty on the Prohibition of Nuclear Weapons“ (TPNW). Ninety days after the treaty has been deposited to the UN, on January 22, 2021, the treaty will enter into force and will then be legally binding to all contracting states.

The Treaty on the Prohibition of Nuclear Weapons was negotiated under the umbrella of the UN and was approved on July 7, 2017 in New York by the representatives of the participating states with 122 votes in favor, one against and one abstention. The nuclear weapon states did not participate.

The treaty confirms the obligation of Art. VI of the NPT to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control. This obligation was unanimously emphasized by the International Court of Justice in 1996 in its advisory opinion for the UN General Assembly. This commitment is once again being flouted in the boycott of the TPNW by the nuclear weapon states and all NATO members.

Accession to the treaty binds its signatory states immediately to designate their territories as nuclear weapons-free zones. 51 states have already taken this step, making the world a great deal safer.

Dear Dr. Merkel,

we call upon you, the members of the Federal Government, and all members of the German Bundestag to take part: Follow us on this path!

Sincerely Yours,



Otto Jäckel