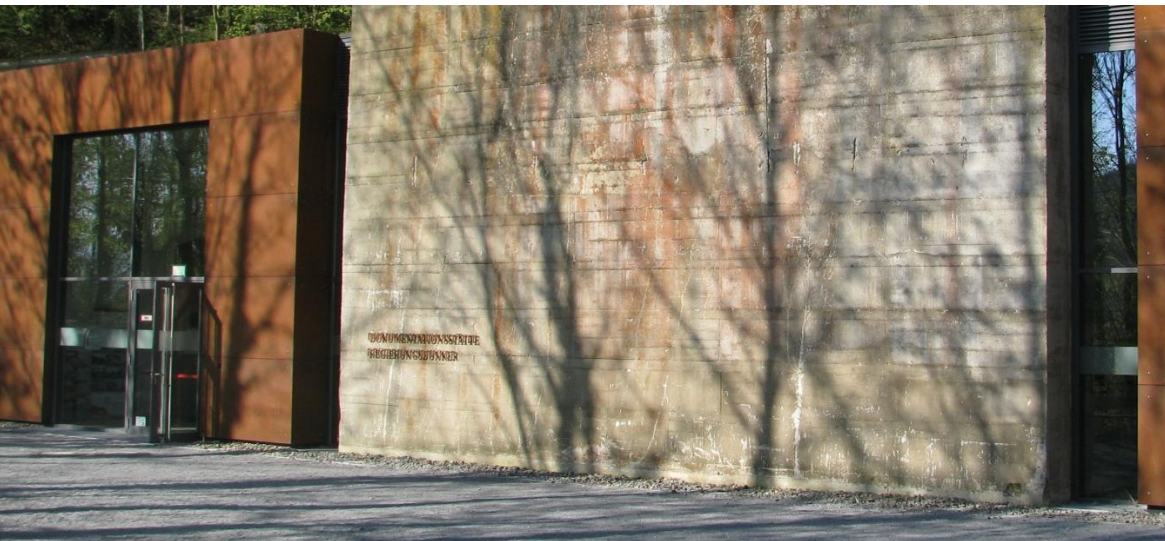




# **An End to the Atomic Age**

**Against Nuclear Deterrence,  
For Nuclear Disarmament and Phase-out**

(revised 2019)



\* website of the former Federal Government Nuclear Bunker,  
see <http://www.regbu.de>.

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## Foreword

Public debate on the issue of nuclear weapons is largely dominated by myths. One of the most widespread myths of the Atomic Age is the idea that nuclear deterrence secures peace throughout the world. Another popular myth considers nuclear weapons to be legal since it tells us there are no international treaties prohibiting them. At the time of writing this paper another idea being expounded is that the declaration of the treaty on the prohibition of Nuclear weapons by 122 states within the United Nations on the 7<sup>th</sup> of July 2017 is itself a violation of the Non-Proliferation Treaty. This is the justification given by the German government for its refusal to participate. Meanwhile the nuclear arsenals are being steadily modernised. Here, the largest known project is the development of a new generation of atomic bombs in the USA: the B61-12. This affects Germany, too, since it will be the bomb of choice to replace the B61 atomic bombs stored in Büchel, in the Eifel region, for deployment by the Tactical Wing 33 of the German Air Force as part of the “nuclear sharing” agreements. The new bombs will be fitted with electronic laser guidance systems and have a variable yield. The reader may be reminiscent of images of precisely targeted Hellfire missiles hitting their targets after being fired from drones - with the addition of the nuclear flash. In light of growing tensions between the largest centres of power in the world, the risk of the use of nuclear weapons in the consequence of an escalation of a regional armed conflict, or even as the result of a false alarm, is becoming ever more real. With this study “An End to the Atomic Age”, the lawyers and legal experts in IALANA Germany are making a clear statement to counter the aforementioned myths. At the same time, they list the practical steps needed to develop foreign and security policy based on nuclear disarmament and the peaceful solution of international conflicts, following the dictates of the United Nations Charter, international humanitarian law and the German constitution. IALANA Germany is addressing the politicians responsible for foreign and security policy with this publication. At the same time, it is also designed to be read by members of political parties, churches, unions, organisations and initiatives of the peace movement in the hope that our expertise and the documents cited in the Appendix will provide a source of facts and arguments for the public discussions that are needed on this issue.

Otto Jäckel, Chairperson, IALANA Germany

## I. The Myths and Fairy Tales of the Nuclear Age

We are told:

- Since we have nuclear weapons in the world the “genie is out of the bottle” and we must now live with them forever. No one can reverse the existence of nuclear weapons and of the related knowledge and capabilities.
- Pessimists and alarmists spread the view that nuclear weapons could be used at any time but the experience since 1945 contradicts this scaremongering.
- Nuclear weapons have even had a positive effect: Since the 1945 atomic bombings of Hiroshima and Nagasaki they have saved the world from any further nuclear conflict and have ensured a long period of peace. Nuclear weapons themselves are therefore the best deterrent against any use of nuclear warheads and against military attacks.
- Nuclear weapons have become merely “political weapons”, which serve only to deter and are not intended ever to be used.
- In spite of this fact if a decision was indeed taken to use nuclear weapons, it would not happen without the required, careful consideration of responsible statesmen. One can count on that.
- In any case, the five official nuclear powers (USA, Russia, United Kingdom, France and China) are all responsible states. It is completely legitimate and legal for them to have nuclear weapons at their disposal.
- The International Atomic Energy Agency (IAEA) monitors all nuclear plants, fission products and waste. As a result of this monitoring system, the components for the manufacture of nuclear weapons are not accessible. If any state were to depart from this monitoring system, it could easily be brought ‘back to the right path’, as is shown by the case of Iran.

Even today, these cleverly orchestrated and subtle myths have not lost their power of persuasion over many people.

## II. Has Deterrence with Nuclear Weapons Ensured Peace?

Contrary to the widely held and often repeated opinion that the nuclear deterrence system has impressively demonstrated its effectiveness and viability during and after the Cold War and until today and thus having ensured peace, it should be noted that the number of situations in which our planet earth has been close to the nuclear abyss in recent decades is considerable. Most people do not know this, or at any rate are not even aware of it. In the past 70 years there have been at least 20 extremely critical situations – in both East and West – where the world stood on the brink of nuclear inferno. Luckily, very fortunate circumstances allowed the world to escape nuclear disaster. In the decades of the nuclear era, the survival of humankind has hinged on some lucky coincidences – as the former US Defense Secretary Robert McNamara stated.<sup>1</sup>

We illustrate this here with some specific ‘incidents’ (i.e. near-disasters for humankind) in the box below. These are limited to those which occurred at the time of the NATO rearmament which took place in 1983 under extremely dangerous conditions. Proponents, of course, still suppress and ignore this fact.

- On **26.9.1983**, shortly before the stationing of new US nuclear missiles in Europe, the 44-year-old Lieutenant Colonel Stanislaw Petrov was in command of the on duty unit of the command centre Serpukhov-15 near Moscow. After midnight, the atomic alarm sounded suddenly. The Soviet Oko satellite (Kosmos 1381 class) reported at 00:40 that an American Minuteman missile was approaching. Seconds later, this was followed by indications of the launch of second, third, fourth and fifth missiles, all heading towards the USSR. An officer on duty in such a scenario has only five to ten

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<sup>1</sup> “I want to say – and this is very important, at the end we lucked out. It was luck that prevented nuclear war. We came that close to nuclear war at the end.” These were his words quoted in the Oscar-winning film “The Fog of War, Eleven Lessons from the Life of Robert McNamara” by Errol Morris, as cited in: <http://www.ecoglobe.ch/nuclear/d/drs15201.htm> (26.05.2009); see also Robert McNamara/James Blight, *Wilson’s Ghost*, New York, 2001, p. 180 ff.



minutes to identify the missiles beyond reasonable doubt. After that Yuri Andropov, former Soviet Communist party General Secretary and Soviet commander-in-chief had to be informed. Had he chosen to retaliate defensively, seven minutes later intercontinental missiles (type SS-18) would have been fired towards Washington, New York and several US military bases: this was the strategy dictated by the prevailing doctrine of “mutually assured destruction”. However, Lieutenant Colonel Petrov hesitated, because the ground warning system was not confirming the signal emitted by the satellite. So it was possible that the satellite had been triggered by the influence of cosmic radiation. “It is impossible to thoroughly analyse the events in a few minutes,” said Petrov of the incident, twenty years later: “You can rely only on your intuition.” On that night of September 26, 1983, Petrov decided intuitively and assumed it was a false alarm. Two decades later, on May 21, 2004, the American Association of World Citizens presented him the “World Citizen Award” for helping to “prevent the Third World War”.<sup>2</sup>

- A second extremely critical constellation at the time of the NATO rearmament also almost ended in nuclear disaster at the beginning of **November 1983**. On 2.11.1983, as part of the annual autumn manoeuvres, the NATO exercise ABLE ARCHER 83 had begun. The realistic warlike scenario to be rehearsed for ten days was a nuclear attack on the Soviet Union, in 1:1 scale.<sup>3</sup> In contrast to the previous years, there were some very unsettling differences in Moscow’s reaction: an error at the KGB led to the simulated NATO alert state DEFCON 1 not being recognised as a simulation but instead as a real

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<sup>2</sup> See Ingeborg Jacobs, Stanislaw Petrow: Der Mann, der den Atomkrieg verhinderte. Wer rettet uns das nächste Mal?, with a foreword from Claus Kleber, Westend-Verlag, Frankfurt am Main 2015, 238 pages.

<sup>3</sup> See Markus Kompa, Die Ryan-Krise – als der Kalte Krieg beinahe heiß geworden wäre, in: <https://www.heise.de/tp/features/Die-RYAN-Krise-als-der-Kalte-Krieg-beinahe-heiss-geworden-waere-3420663.html>; Benjamin B. Fischer, A Cold War Conundrum: The 1983 Soviet War Scare in: <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/a-cold-war-conundrum/source.htm>.

alert state. The Soviet military command could assume practically no other reason for this than an imminent nuclear first strike. The suspicion was that the attack would take place on the anniversary of the November Revolution, since the Soviets presumed the NATO command would try to take advantage of possible distractions. On November 5, KGB agents were given the order by the Kremlin to report anything that indicated an attack being prepared. On November 8 or 9, the KGB erroneously informed its Western stations that troops had been mobilised on some Western military bases. Without the Western intelligence agencies noticing, as many Warsaw Pact launch ramps for nuclear warheads were positioned to ready them for operation. The Director of the International Department (and later KGB Director) Vladimir Kryuchkov was convinced that an American first strike was definitely being planned – and he never ceased to believe this, right up until his death in 2007. Luckily, this precarious situation did not end in a nuclear conflict because of information obtained by a “scout” planted within NATO by the GDR foreign intelligence service.

- Incidents like this occurred in the West as well as the East. Some time earlier, just before NATO took the decision to re-arm, on **9.11.1979** a highly critical incident took place in the US Air Force Command. On that day the Worldwide Military Command and Control System flashed a warning on its electronic display: "Enemy Attack". It had decoded a notification as a nuclear attack with several missiles launched from a Soviet submarine in the North Atlantic. In a very short time, the US Armed Forces began preparing for a nuclear counterstrike. American and Canadian interceptors had already taken off and the ICBMs were ready to launch as it became clear that a computer fault had led to the text of a test tape being played back.
- Similar events occurred later in history, too, such as the one on **January 25, 1995**, when Russian technicians tracked on their radar screens the shooting down of a US/Norwegian research rocket from Andøya Rocket Range, off the Norwegian coast. They then appeared to see the tracks of further missiles, but these were actually just the ejected stages of the research rocket's propulsion. The launch had, as agreed, been previously announced to the Russian military, but

inexplicably this notification had not reached the radar technicians. If a few more minutes had passed, Russian President Boris Yeltsin – at the time both physically afflicted and alcohol-dependent – would have had to take a decision on nuclear retaliation.<sup>4</sup>

These highly critical incidents were not anomalies or regrettable one-off cases. Instead, they were structural.

The survival of humankind and all life on this planet can no longer be left dependent on these “lucky conditions”. Security strategies which deliberately factor in (and are based on) the mega-risks for humanity of a nuclear inferno are inhuman and, ultimately, criminal.

### III. The Contradictions of Nuclear Deterrence

All the concepts and strategies of nuclear deterrence assume that potential adversaries can be effectively deterred from either a nuclear or non-nuclear attack because a devastating military retaliation would mean they suffer unacceptable consequences and damage, and possibly even total destruction in a nuclear inferno. So the ability and readiness to carry out this type of retaliation has to be credibly demonstrated, which requires the appropriate military equipment and weapons systems, logistic facilities, and strategies and doctrines of use (“second-strike capability”).

However, the constitutive component for the “viability” of this deterrence “logic” is always the assumption that one is dealing with an opponent making all of their decisions on the basis of rational calculations based on sufficient information, including ad hoc information.

The concept of deterrence, therefore, is not even viable according to its own “logic” when it comes to deterring an “irrational” enemy. This can,

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<sup>4</sup> See i.a. Markl, *Atomkrieg aus Irrtum*, Wiener Zeitung [http://wienerzeitung.at/app\\_support/print](http://wienerzeitung.at/app_support/print), 26.05.2009.

for example, be the case when the opponent is not or not easily reachable with “rational” arguments: when, for whatever reason, they are not able or willing to weigh up the situation in a rational manner. Historical examples of these “deterrence-resistant” adversaries were not exactly uncommon in the 20th century – the bloody “Age of Extremes” – so we need to ask ourselves what would have happened if they had been armed with nuclear weapons. The current geopolitical situation poses similar risks.

Even in the case of a generally “rational adversary”, the viability of nuclear deterrence (and also “conventional” deterrence) depends on them having sufficient time and information available to adequately assess the critical situation and in the remaining short time to decide and act upon their conclusions in a correspondingly rational manner. It is extremely doubtful, indeed questionable, to assert that this is routinely the case in situations where the survival of humanity is at stake.

Another case where the logic of “deterrence” breaks down, and even reaches dangerous limits, is where human miscalculation or “technical failure” comes into play. This is the case when defects or erroneous electronic information have an impact within communication systems and, given the extremely short warning periods, make it difficult or even impossible for the other side to safely diagnose a situation, for example to determine whether the data available from the computer systems indicate an enemy attack or not.

And finally: Nuclear deterrence is useless against terrorist groups or suicide bombers, who do not recoil in fear before either nuclear explosives or their own death.

#### **IV. Collective Security Rather Than Nuclear Deterrence**

At the beginning of the 1980s in a critical phase of the Cold War, the Olof Palme Commission, which consisted of 19 important politicians and experts from the East and West, North and South, including the previous German Federal Minister and disarmament expert Egon Bahr, analysed the life-threatening consequences of the doctrine of deterrence and drew

many remarkable conclusions, which they summarised in an alternative concept they labelled “common security”:

“In the present era, security cannot be achieved unilaterally. We live in a world whose political, economic, cultural and, especially, military structures exhibit increasing mutual dependence. States can no longer seek their own security at each other's expense.”<sup>5</sup>

The conclusion in the nuclear era with its “mutually assured destruction” therefore has to be: **Safety can no longer be achieved *from* or against the potential enemy but only *with* him.**

## V. The Obligation for Complete Nuclear Disarmament

“There exists an **obligation** under international law to pursue in good faith and to bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”<sup>6</sup>

The International Court of Justice (ICJ) in The Hague unanimously stated this obligation in its epochal Advisory Opinion of July 8, 1996, on the (II) Legality of the Threat or Use of Nuclear Weapons.

According to the Court, the threat to deploy and use nuclear weapons generally violates the rules of international law applicable to armed conflict, in particular the principles and rules of international humanitarian law. Self-defence with nuclear weapons is also fundamentally prohibited under international law, because they do not distinguish between civilians and combatants, cause unnecessary suffering, especially through their radioactive radiation, and affect neutral states across borders. The ICJ has stated that the right of self-defence under Article 51 of the UN Charter is limited by international humanitarian law, “whatever means of force are used”. A divergent rule

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<sup>5</sup> See The Palme Report, publ. Olof Palme/H.Rogge, Berlin 1982.

<sup>6</sup> See Advisory Opinion of the International Court of Justice:  
<http://www.un.org/law/icjsum/9623.htm>, 24.4.2017.

for extreme self-defence situations in which the survival of a state is at stake cannot be inferred from international law.

This legal opinion was requested from the ICJ by the UN General Assembly on the basis of Article 96 of the UN Charter. With this request, the UN General Assembly – against the bitter opposition of the nuclear-weapon states and their allies – had taken on board initiatives from citizens’ movements and NGOs worldwide, including the “World Court Project” initiated by the IPPNW, International Peace Bureau (IPB) and IALANA.<sup>7</sup>

With its July 8, 1996 decision, the ICJ explicitly reaffirmed the states parties’ obligation according to Article VI of the Non-Proliferation Treaty (NPT) to complete full nuclear disarmament (the atomic “Zero Option”). Furthermore, in its advisory opinion the ICJ also stated this obligation to complete nuclear disarmament applies to all countries of the world under customary international law and not only the member states of the NPT. A state that breaks this obligation is breaking current law and commits a crime under international law.

The recent decision of the International Court of Justice on October 5, 2016 not to further pursue the case brought by the Marshall Islands against the United Kingdom, India and Pakistan as nuclear-armed powers also does not weaken the obligation to implement complete nuclear disarmament. There was no substantial ruling: the court decided not to issue a ruling in this matter solely on the basis of formal consideration (missing of appropriate court jurisdiction).

## **VI. The Non-Proliferation Treaty (NPT)**

This international treaty, which came into force in 1970, rests on four pillars:

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<sup>7</sup> See the documentation published by IALANA: Atomwaffen vor dem Internationalen Gerichtshof. Mit einem Geleitwort von Bundesverfassungsrichter a.D. DDr. Helmut Simon, LIT-Verlag, Münster, 1997, 417 pages.

- (1) The non-nuclear-weapon states undertake not to possess or acquire nuclear weapons or control over such weapons directly, or indirectly.
- (2) The nuclear-weapon states undertake not to support the non-nuclear-weapon states in acquiring nuclear weapons and, in the frame of valid international law, to do everything possible to hinder the proliferation of nuclear weapons.
- (3) All nuclear-weapon states undertake to start and pursue good-faith negotiations with the aim of completely disarming and then eliminating their own nuclear weapons.
- (4) All NPT member states have the right to access nuclear technology and its “civilian usage”.

Before the conclusion of the NPT in 1968, it was feared that without this treaty the number of nuclear-weapon states within a short time would be higher than 40. The fact that this has not happened is an important success of the NPT, which is the only international agreement where the goal of total nuclear and non-nuclear disarmament (under effective international control) is required. 191 states ratified the treaty but the new nuclear powers Israel, India and Pakistan have not become parties. Since North Korea denounced its membership in 2003, the total number of member states is 190.

The future of the Non-Proliferation Treaty is, however, uncertain. Its normative and supervisory regime will break down sooner or later unless it becomes possible to fulfil the commitment of greatest importance to the non-nuclear states: a realistic implementation of the obligation to pursue and conclude good-faith negotiations for the elimination of all nuclear weapons.

## **VII. Clear Violations of the NPT**

Despite the commitments which they made, the nuclear-weapon states and many of their allies have in many ways openly breached their contractual obligations, without being held liable for these actions.

1. This obvious treaty violation consisted and consists principally of the failure of any single nuclear-weapon state to commence negotiations with

a view to complete nuclear disarmament, contrary to NPT Art. VI. There appears to be absolutely no readiness to do this.

The number of warheads worldwide has actually decreased since the end of the Cold War (“East-West conflict”). However, according to respected experts there are still some 14,465 nuclear warheads in the world, of which approximately 13,250 are in the possession of the United States and Russia. And each of these has many times the destructive power of the bombs dropped on Hiroshima and Nagasaki. The remaining 1,200 nuclear warheads are in France, the United Kingdom, China, Israel, India, Pakistan and North Korea. Currently the USA has about 1,750 “strategic” nuclear warheads (land- and sea-based intercontinental missiles and strategic bombers), and Russia approximately 1,600. The experts estimate that the USA has about 800 operational nuclear delivery systems, and Russia approximately 560. Even today, the USA, Russia France and the UK each maintain a high number (around 3,750) of nuclear warheads on high alert, ready for deployment.

On April 8, 2010, in Prague, the US and Russian presidents signed the New START arms-reduction treaty setting seven-year targets (from ratification) for reducing the number of operational “strategic warheads” (i.e. those on land-based intercontinental missiles, nuclear submarines and strategic bombers) from 2,200 to 1,550 each and the number of operational “strategic” nuclear delivery systems (missiles and bombers) to 700 each. In addition, each country is allowed 100 delivery systems as a reserve. Non-strategic nuclear weapons are not covered by this agreement. The USA ratified the treaty on 22 December 2010 and Russia on 25 January 2011. Even after implementation of this START follow-up agreement, all life on Earth is still under immediate threat from the existing c.13,250 US and Russian nuclear warheads, of which 1,800 are on alert. Real disarmament would look very different!

The New START contract was concluded for a limited period until February 2021. Its extension has become highly questionable due to the ever-increasing tensions between the contracting parties in the course of NATO's eastern enlargement and the Crimean conflict. The prospects have deteriorated drastically, above all due to the US government's termination of the INF Treaty in February 2019, which was concluded in



1987 to ban medium-range nuclear missiles. The appeal of the Deep Cut Commission to immediately extend the validity of the NEW START treaty by 5 years has not been heeded by the Trump government. Due to its refusal to negotiate an extension, the Russian government suspects that the US government wants to let the contract expire.

2. The background for the US administration's behaviour is the new US nuclear strategy approved by the White House on 2 February 2018 (Nuclear Posture Review - NPR - 2018). This strategy paper provides for a modernization of the US nuclear arsenal in order to increase its "deterrent potential": new, more flexible nuclear weapons with adjustable explosive power - trivially referred to as "mini-nukes". With an explosive force of up to 20 kilotons, these too have a greater destructive potential than the Hiroshima and Nagasaki bombs. They are intended to convert the existing nuclear warheads of the submarine-supported long-range missiles. In addition, a nuclear cruise missile is planned. The USA wants to be able to react nuclear not only to non-nuclear attacks but also to cyber-attacks.

According to the 1996 opinion of the International Court of Justice, all nuclear-weapon states are obliged "to conduct and conclude negotiations in good faith leading to complete nuclear disarmament in all its aspects." For all Contracting States this obligation also arises from Art. VI NPT.

The US government's casual assertion in NPR 2018 that "the deployment of nuclear weapons is compatible with international law applicable to armed conflict" is wrong. In a Pentagon report on nuclear strategy published in 2013, it was still stated that all plans for the use of nuclear weapons "must, for example, observe the principles of distinction (between military and civilian) objectives and proportionality in order to minimize collateral damage to civilian populations and civilian objects. Accordingly, the current and former Commander-in-Chief of the Strategic Command of the U.S. Army announced that they would refuse orders to deploy nuclear weapons in violation of the law governing armed conflict ("jus in bello"). The fact is that nuclear weapons cannot be used in accordance with international law because they cause unnecessary suffering, cannot distinguish between combatants and civilians and affect uninvolved and neutral states.

The extended role of nuclear weapons to new deployment scenarios contradicts the obligation under international law to reduce the role of nuclear weapons in security policy. It increases the danger of nuclear war.

As the "price" for approving the NEW START Treaty, the Obama administration had agreed to the modernization of nuclear weapons. Accordingly, the operational capability has been constantly increased to this day. The B-61 aircraft bombs stationed in Germany are also being modernized for 10 billion dollars. They will be equipped with a variable explosive force, a modern guidance system and the strongest version B-61-12 will be bunker-breaking.

Misleadingly, the nuclear weapon states declare the ongoing adaptation to their strategic needs of the world as nuclear disarmament!

3. Although all non-nuclear-weapon states are bound under Article II of the NPT, and Germany also in the "Two Plus Four Agreement" from 1990, to not have any direct or indirect control over nuclear weapons, within NATO there is still the practice of "nuclear sharing". Specific instances of "nuclear sharing" include:

(1) Germany, the Netherlands, Belgium, Italy and Turkey remain involved in the Nuclear Planning Group of NATO.

(2) In secret bunkers in Germany, the Netherlands, Belgium, Italy and Turkey, there is still an unknown number of nuclear weapons with many times the destructive power of those used in Hiroshima and Nagasaki which, in the case of a state of tension or war, are intended to be made available by the US to the military forces of these non-nuclear-weapon states (i.e. including the German Bundeswehr) for the bombing of enemy targets: This contravenes the regulations in Article II of the NPT.

(3) The Bundeswehr and the armed forces of other NATO non-nuclear-weapon states maintain nuclear weapon delivery systems such as the Tornado aircraft stationed at Büchel, in the Eifel region, (Tactical Air Force Wing 33, formerly Fighter Bomber Wing 33). They regularly conduct nuclear-weapon exercises.

4. All NATO countries still make use of the so-called "war reservation". This interpretation considers the Non-Proliferation Treaty as applicable

“unless or until a decision were made to go to war, at which time the treaty would no longer be controlling”.<sup>8</sup> There is (intentionally) no great publicity surrounding this “war reservation”, which, if valid, would make the NPT, with its prohibition of the transfer of nuclear weapons to non-nuclear-weapon states, practically null and void in any situation of tension or war.

There is no public evidence for any international-legally effective establishment of a formal reservation to Article II of the NPT. In fact, there are substantial legal objections to its validity – both procedural and material. The “war reservation” was not “formulated in writing and communicated to the ... parties to the treaty” (VCLT9 Article 23)<sup>9</sup> and it is certainly “incompatible with the object and purpose of the treaty” (VCLT Article 19).

5. Contrary to the obligation in Article I of the Non-Proliferation Treaty not to support non-nuclear-weapon states in their development or acquisition of nuclear weapons, the United States has not only tolerated the possession of nuclear weapons by Israel (a non-member of the NPT, as are India, Pakistan and North Korea) but has also supported and continues to support Israel’s nuclear program financially, technologically and politically.

6. The nuclear weapons program in Pakistan is also tolerated as part of the US alliance with the country. Pakistan would not have become a nuclear-weapon state without the technological cooperation and assistance of important member states of the NPT – including the USA

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<sup>8</sup> See the German Parliament memorandum submitted to the Foreign Office as part of the consultation on ratifying the NPT, which was included in Bundestag Drucksache 7/994, p. 17. The memorandum contained the US interpretation of the NPT - otherwise known as the “Rusk Letter” – reproduced in the annex. However, there was and is almost no public awareness of this interpretation. The full Drucksache 7/994 is available in German at: [http://www.ialana.de/images/pdf/arbeitsfelder/atomwaffen/atomsperrvertrag/Seite\\_16-20\\_aus\\_0700994.pdf](http://www.ialana.de/images/pdf/arbeitsfelder/atomwaffen/atomsperrvertrag/Seite_16-20_aus_0700994.pdf).

<sup>9</sup> Vienna Convention on the Law of Treaties (VCLT) from 23.5.1969 (UNTS Vol. 1155 p. 331; BGBl. 1985 II, p. 927).

and Germany. This was a gross violation of the prohibition of proliferation.

7. Although the United Nations imposed sanctions in 1974 and 1998 against India because of its nuclear weapon testing, the USA has in the meantime bilaterally ended the sanctions, promising and granting India access to a large amount of nuclear technology and material. Thus, the USA has helped to legalise the status of India as a new nuclear power contrary to the provisions of the NPT.

Under pressure from the USA, the Nuclear Suppliers Group (NSG), to which Germany also belongs, approved further nuclear exports to India in 2008. None of the governments involved have shown a willingness to defend non-proliferation and refuse India the approval of an exemption. In light of the consensus principle, this could have prevented the deal. But the other member states of the NPT were not even involved in the proceedings.

## **VIII. The Nuclear Weapons Convention and the Treaty on the Prohibition of Nuclear Weapons**

A first step for the nuclear-weapon states, in order to fulfil their international obligation to begin and conclude negotiations in good faith leading to complete nuclear disarmament under strict and effective international control, would be to declare a willingness to take official note of and begin a discussion of the draft Nuclear Weapons Convention which was drawn up by non-governmental organisations with the active participation of IALANA. The UN Secretary-General forwarded this draft of a binding treaty on the prohibition and elimination of all nuclear weapons to all UN member states in 2008, calling for them to assess it and begin corresponding negotiations.<sup>10</sup>

The discussion gained new impetus from a series of Conferences on the Humanitarian Impact of Nuclear Weapons which were an initiative of the non-nuclear-weapon states Norway, Mexico and Austria. The opening

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<sup>10</sup> UN Document A/62/650 of 18 January 2008.

conference in this series took place in Oslo from May 4-5, 2013, followed by Nayarit, Mexico (February 13-14, 2014) and Vienna (December 8-9, 2014). In particular, the conference topics dealt with the disastrous consequences of any use of nuclear weapons, culminating in the “Austrian Pledge” (later renamed Humanitarian Pledge), since endorsed by more than 120 states. This urges all the NPT members to finally fulfil their obligations under Article VI of the NPT.

In December 2012 and again in October 2015, the UN General Assembly set up an Open-Ended Working Group on nuclear disarmament to ensure progress in the multilateral disarmament negotiations, with the aim of a world without nuclear weapons. Participation in the working group was also open to civil society organisations. In August 2016 after a majority vote, it recommended starting negotiations in 2017 on a ban treaty for nuclear weapons.<sup>11</sup>

In the meantime it has become known that the US government (under President Obama) had a letter sent to all NATO members from its Mission to NATO on 17 October 2016 “strongly encouraging” them against voting for or abstaining the resolution in the UN General Assembly. Furthermore, it called on them to boycott participation in any future negotiations should the UN Resolution be adopted. Otherwise, it went on, with detailed justifications, there would be a risk of NATO nuclear policy losing its legitimacy. (The letter to the NATO Allies from the United States Mission to NATO is reproduced below.)

A United Nations conference on a Ban Treaty was held in New York (27<sup>th</sup> -31<sup>st</sup> of March and 15<sup>th</sup> of June – 7<sup>th</sup> of July 2017), which was marked by unprecedentedly intensive cooperation between civil society (such as ICAN, but also IALANA) and states.

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<sup>11</sup>[http://www.ialana.de/images/pdf/arbeitsfelder/atomwaffen/atomare%20abruestung/open\\_ended%20working%20group/A-AC\\_286-CRP\\_3.pdf](http://www.ialana.de/images/pdf/arbeitsfelder/atomwaffen/atomare%20abruestung/open_ended%20working%20group/A-AC_286-CRP_3.pdf)

On 7<sup>th</sup> of July 2017, the Conference adopted the Treaty on the Prohibition of Nuclear Weapons.<sup>12</sup> Germany - like all other NATO states (except the Netherlands) - did not take part in the conference. The Netherlands voted against the Treaty.

The Treaty reaffirms the prohibition of the threat of the use and deployment of nuclear weapons, which was already established in the 1996 ICJ opinion, and also contains the obligation not to develop, test, produce, manufacture, otherwise acquire, possess or stockpile, transfer, accept, assist others in the prohibited activities or accept assistance in the prohibited activities, or permit the stationing of nuclear weapons on its territory under any circumstances. It thus represents an important step towards the de-legitimisation and proscription of nuclear weapons and related concepts.

On the grounds of an alleged contradiction to the NPT, Germany had refused to participate in the conclusion of the Ban Treaty. In fact, the treaty does not contradict the NPT, but rather reaffirms it, as the treaty preamble shows, which describes the NPT as the cornerstone of the "nuclear disarmament and non-proliferation regime" (para. 18). Article 4

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<sup>12</sup>UN-Document A/CONF. 229/2017/8. The treaty is produced in parts in the annex. See IALANA Statement Regarding the Treaty on the Prohibition of Nuclear Weapons on the Occasion of its Opening for Signature on 20 September 2017, <https://www.ialana.info/2017/09/ialana.statement-regarding-treaty-prohibition-nuclear-weapons-occasion-opening-signature-20-september-2017/> (accessed page on 6th October 2017); Rietiker/Mohr, Treaty on the Prohibition of Nuclear Weapons – A short Commentary article by article, <https://www.ialana.info/2018/04/article-by-article-treaty-on-the-prohibition-of-nuclear-weapons/> (accessed page on 23.05.2018); B. Hahnfeld, Bewertung des Atomwaffenverbotsvertrages, [https://www.ialana.de/images/pdf/arbeitsfelder/ialana%20zur%20aktuellen%20diskussion/ialana%20zu%20abc-waffen/Bernd\\_zum\\_PTNW\\_final.pdf](https://www.ialana.de/images/pdf/arbeitsfelder/ialana%20zur%20aktuellen%20diskussion/ialana%20zu%20abc-waffen/Bernd_zum_PTNW_final.pdf) (accessed page on 23rd of May 2018).

of the Prohibition Treaty, entitled "Towards the complete elimination of nuclear weapons", outlines a possible framework for further implementation of the nuclear disarmament obligation of Art. VI NPT, to which reference is also made in the preamble (cf. para. 17).

The Nuclear Ban Treaty, which as international treaty law is initially only applicable between the States Parties, is an expression of the concept of "humanitarian disarmament": it is anchored in international humanitarian law and in the protection of human rights and contains regulations on the protection of victims and on environmental remediation.<sup>13</sup>

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<sup>13</sup> See Annex, Document 4 „Treaty on the Prohibition of Nuclear Weapons, Preamble, Art. 1, 5, 6, 7“, p. 46.

## **IX. Core Demands from IALANA**

### **1. National Level**

#### **1.1. Ending of all forms of “nuclear sharing” by Germany within NATO**

- (1) Germany must renounce any form of nuclear-capable delivery system (currently the Tornado jets).
- (2) Military exercises to rehearse potential use of nuclear weapons must be stopped immediately (currently Tactical Air Force Wing 33, in Büchel, Rheinland-Pfalz).
- (3) Germany’s participation in all discussions and activities of the Nuclear Planning Group of NATO must cease where this does not relate to nuclear disarmament but rather to the threat or use of nuclear weapons or preparation thereof.

#### **1.2. Germany free of nuclear weapons**

- (1) All remaining foreign nuclear weapons must be removed from Germany permanently and without delay.
- (2) The freedom from nuclear weapons in Germany must be extended to the entirety of German territory in a manner effective under international law and fixed by domestic law, not limited to the 5 new federal states (Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt and Thüringen) and Berlin as currently under the Two Plus Four Treaty.
- (3) There must be an express statutory prohibition of the use of German territory (land, airspace, and coastal waters), foreign (e.g. US) bases and facilities in Germany for storage, transport or transfer of nuclear weapons, including the issuance of overflight rights and access to German ports by ships armed with nuclear weapons.



(4) A complete and unconditional renunciation of nuclear weapons in Germany should be written into the constitution (Basic Law) and modelled on the Austrian “Federal Constitutional Law for a Nuclear-free Austria” of August 13, 1999 – (Federal Law Gazette 1 1161). This contains the following provisions:

- No nuclear weapons may be made in, stored in, tested in, or transported through Austria.
- Nuclear power plants may not be established, and those already established may not be operationalised.
- The transportation and storage of fissionable materials is prohibited. The only exceptions are those materials that are only used for peaceful uses other than energy production.
- Damages caused by accidents with radioactive materials must be paid for by Austria, or in the case of foreign polluters, Austria must try to recover the cost.
- The federal government is responsible for this law’s enforcement.

(5) The German War Weapons Control Act (KrWKG) must be amended in §§16 ff. to ensure the elimination of all exceptions to the standard ban on the following (with breaches enforced by penalty): possession, acquisition, production or handling of nuclear weapons; and research and development into atomic weapons.

(6) The German Military Personnel Act (Soldatengesetz) must be amended to include an express regulation to prohibit any participation of German soldiers in the use of nuclear weapons or in the planning or preparation of such deployment, without exception and applying also to their activities in foreign countries or as part of international alliances and organisations. The law needs to declare culpability for both those giving and those obeying any such orders.

### **1.3. Reduction of the dangers and risks of proliferation of nuclear material into and out of Germany**

- (1) Dissolution and destruction of all stockpiles of plutonium and highly enriched weapons-grade uranium in former production sites (nuclear power stations), interim storage or other storage facilities in Germany.
- (2) Closure of the URENCO uranium enrichment plant in Gronau, Emsland or transfer of ownership to an international body to oversee destruction of the nuclear material.
- (3) Cease equipping and operating research reactors with highly enriched uranium or other weapons-grade nuclear fuel (e.g. Research Reactor II in Garching / Munich).
- (4) Statutory ban on the export of nuclear weapons carrier systems (such as the submarines of the Dolphin class – delivered by Germany to Israel, among others).
- (5) Ban and strict monitoring of the ban on the export of nuclear weapons-capable technology.
- (6) Effective statutory protection for whistleblowers who either internally or publicly disclose the violations of domestic and/or international regulations (“societal verification”).

### **1.4. Adherence to nuclear phase-out**

A major obstacle to the global reduction and elimination of nuclear weapons is the civil use of atomic energy, which Article IV of the NPT has permitted to all member states without regard to the risks involved. Every state that uses nuclear energy for civil purposes also has the potential to produce weapons-grade fissible material. This is true not only for Iran, but for all states which operate nuclear plants and uranium enrichment centres, including Germany.

A phase-out or even reduction of the civil use of nuclear power (e.g. for energy supply) would serve to reduce the proliferation risks and help to reduce the dangers of military use of nuclear plants. IALANA therefore calls on the German Federal Government to maintain its commitment to and accelerate the phase-out of atomic power by 2022, as decided on June 6, 2011, in the wake of the Fukushima Daiichi disaster, as well as to increase its promotion of renewable energy sources and significant improvements in energy efficiency in all sectors.

A law needs to be passed to expressly exclude any financial or technological support by Germany for the use of nuclear power to supply energy abroad or via EURATOM.

### **1.5. Affiliation to the Treaty on the Prohibition of Nuclear Weapons of 7 July 2017**

Germany must sign and ratify the Treaty on the Prohibition of Nuclear Weapons adopted within the framework of the United Nations on 7 July 2017.

## **2. EU Level**

### **2.1. EU to sign Non-Proliferation Treaty and not to acquire status of 'nuclear-weapon power'**

In the debate on the acceptance of the NPT, at the end of the 1960s Germany and other EU states proposed the option that the European Union could attain the status of a nuclear-weapon power (i.e. acquire nuclear weapons) under certain conditions. This "European Option" was supported in the Questions and Answers interpretation addressed to the NATO Council and NATO countries by the US government on April 2, 1967, and in a corresponding declaration by the US Secretary of State Dean Rusk on July 10, 1968. According to this interpretation, which is highly questionable from the point of view of international law,

the NPT “would not bar succession by a new federated European state to the nuclear status of one of its former components”.<sup>14</sup>

Even if there is currently no foreseeable chance of the EU becoming a federal state: With the – long overdue – accession of the EU to the NPT, this (federal) “European option” concerning “European nuclear weapons” would finally be irrelevant.

However, other options regarding a “EU nuclear power” that are currently being discussed behind closed doors need to be prevented. Any proliferation of nuclear weapons within the EU and/or the jurisdiction of EU institutions would be a breach of the NPT and a threat to its viability, throwing the whole world into dangerous turbulence.

## **2.2. Research policy**

The EU needs sufficient resources to research and promote the verifiable elimination of all nuclear weapons (“Zero Option”). This would be an important political signal of the seriousness of its willingness to start the process of complete nuclear disarmament and would address the following main research areas relevant to complete nuclear disarmament:

- Peace and security policy issues for a nuclear Zero Option
- Technical verification methods and hurdles
- Energy policy issues
- Implementation conditions for a ban
- Prevention of violations (including “societal verification” mechanisms)

## **2.3. Accession to the Treaty on the Prohibition of Nuclear Weapons and Initiative for a nuclear weapon convention**

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<sup>14</sup>See the Letter reproduced in the annex and the German Parliament memorandum submitted to the Foreign Office: Bundestag/ Drucksache 7/994.

The EU and all EU states should join the Treaty on Prohibition of Nuclear Weapons of 7 July 2017. In its resolution of 27 October 2016 on nuclear safety and non-proliferation (2016/2936 [RSP]), the European Parliament rightly urged the states of the European Union to participate and actively support the treaty preparatory conference and its concerns.<sup>15</sup> In addition, the EU should, in fulfilment of its obligations under international law, take the initiative to refer the present draft "Nuclear Weapons Convention" to all UN member states and promote its conclusion.

### 3. NATO Level

#### 3.1. Renunciation of the “war reservation”

As soon as possible, NATO and its member states should issue a declaration, binding under international law, that they will not enact the so-called “war reservation” promulgated at the enactment of the Non-Proliferation Treaty, on the basis of which they have previously claimed they will no longer be bound by the NPT if “a decision were made to go to war”.<sup>16</sup>

#### 3.2. Removal of nuclear weapons

Nuclear weapons should be removed within one year from Germany and all NATO states that are not nuclear-weapon states in terms of the NPT. Their redeployment should be renounced in a manner effective under international law.

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<sup>15</sup> Document of the European Parliament P8\_TA-PROV(2016)0424; MEPs of CDU/CSU and SPD agreed, despite the fact that the German government opposes the affiliation to the treaty in the UN General Assembly and previous committee consultations.

<sup>16</sup> See the Letter reproduced in the annex and the German Parliament memorandum submitted to the Foreign Office: Bundestag/ Drucksache 7/994, p. 17.

### 3.3. Changes to the NATO nuclear strategy

The NATO nuclear strategy must immediately be changed, since it is irreconcilable with the standards of international humanitarian law (Hague and Geneva Conventions) and the disarmament obligations of Article VI of the NPT. This concerns particularly the following areas:

- Renunciation, effective under international law, of any option of threat or use of nuclear weapons against non-nuclear-weapon states or non-state actors.
- Renunciation, effective under international law of any form of nuclear first strike or threat thereof.
- Explicit recognition of the Advisory Opinion of the International Court of Justice of July 6, 1996, stating the principle international-legal prohibition of any threat or use of nuclear weapons since such threat or use is incompatible i.a. with the dictates of international humanitarian law.
- Strengthening of the existing international-legal commitment to complete nuclear disarmament in all its aspects (Article VI NPT)
- Support for and adherence to the Treaty on the Prohibition of Nuclear Weapons; end to obstructionist policies.

### 3.4. Comprehensive Nuclear-Test-Ban Treaty

The Comprehensive Nuclear-Test-Ban Treaty (CTBT), which was adopted in 1996 and signed by 183 states, must be ratified immediately by all NATO members, in particular the USA. This treaty will only enter into force when the 44 specific states mentioned in “Annex 2” ratify it. Of these, currently Egypt, China, India, Iran, Israel, North Korea, Pakistan and the USA are yet to ratify, with India, Pakistan and North Korea yet to sign it.

### **3.5. Nuclear cooperation**

All NATO countries must in the future refrain from any nuclear cooperation with and any support for states that have not ratified the Non-Proliferation Treaty, particularly in the development of technologies and equipment relevant to the issue of nuclear weapons.

### 3.6. NATO initiative on the nuclear weapons convention

In the NATO Council, a policy decision should be introduced and finalised on the readiness of NATO and NATO nuclear-weapon and non-nuclear-weapon states

- to support, pursue in good faith and to conduct conclusive negotiations on effective steps towards nuclear disarmament with the eventual goal of an internationally monitored, comprehensive “Global Zero”.
- in particular, support and adhere to the Treaty on Prohibition of Nuclear Weapons of 7 July 2017.
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## 4. Global Level

### 4.1. Strengthening the NPT regime

The NPT Review Conferences held every five years have yet to deliver any substantial progress along the route towards complete nuclear disarmament dictated by Article VI. The sole achievement has been a permanent extension of the NPT, decided in 1995. Not even the recommendations for follow-on actions voluntarily agreed to by the nuclear-weapon states in the Final Document of the 6th Review Conference in 2000 have been fulfilled.

The non-fulfilment by nuclear-weapon states of obligations resulting from the NPT and customary international law, although these states then expect the non-nuclear-weapon states to fulfil their NPT commitments, was one of the factors which led the non-nuclear-weapon states to decide to begin treaty negotiations on a general nuclear weapon ban in March 2017, even if the nuclear-weapon states refuse to take part. This strengthens the NPT treaty. IALANA supports this initiative.



## 4.2. Strengthening and adapting the IAEA

The verification exercised by the International Atomic Energy Agency (IAEA), based in Vienna, has so far been inadequate. The establishment of an effective control system was obstructed before and during negotiations concluded in 1968 on the Non-Proliferation Treaty and the Verification Agreement by such parties as Germany, Italy and Japan due to their concerns at the time relating to the East-West conflict and dangers of “industrial espionage” (even by friendly countries).

The principal activity of the IAEA remains the control of the “nuclear fuel cycle”, but this is primarily done on the basis of reports and periodically updated material balance sheets written by the very parties being monitored.

The Additional Protocol to the Verification Agreement adopted in 1997 has not yet been ratified by many states but has brought about some progress. However, surprise inspections still only take place to a very limited degree and are also preceded by “short-term” advance announcements. Effective unannounced on-site inspections and unhindered free inspection and investigation rights are still missing. The nuclear-weapon states are hitherto largely excluded from the verification measures. In addition, there is to date no adequate protection for people who reveal deficiencies or violations (see the draft by Josef Rotblat et al. for “Societal Verification” and the corresponding sections in the Draft Nuclear Weapons Convention<sup>17</sup>). Urgent action is needed to remove these structural deficits in the IAEA verification regime.<sup>18</sup>

The IAEA’s personnel sector also needs drastic improvement. The IAEA currently has about 350 inspectors. This is far too few for their global responsibilities of monitoring the non-proliferation regime, given the world’s very large number of nuclear facilities. The regular budget of the

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<sup>17</sup> See, for example, <https://www.amazon.de/Societal-Verification-Dieter-Deiseroth/dp/3837065820>.

<sup>18</sup> See the suggestions in: Deiseroth, Compliance and Risks in the Safeguards System of the IAEA, available at: <http://www.lcnp.org/pubs/IALANA2012/April.2012.pdf>.

IAEA for all departments in 2016 amounted only to \$362 million USD; and, only a relatively small part of that was allotted to the verification department. The total budget of the IAEA is about equivalent to the value of 30 armoured tanks. The IAEA's demand for a significant increase in its budget and the number of inspectors deserves every support and must finally be implemented.

### **4.3. Nuclear-weapon states under the NPT**

In order to fulfil their obligations under Article VI of the NPT, all nuclear-weapon states have to control and carry out immediately the affiliation to the nuclear weapons ban treaty; commit in a binding way under international law to cease the production and the mobilisation of all new nuclear weapons and nuclear-capable delivery systems; and finally subject themselves (as do all non-nuclear-weapon states) to the IAEA verification regime.

### **4.4. India, Israel, Pakistan and North Korea**

These new nuclear-weapon states must join eventually the Non-Proliferation Treaty and fulfil the commitments of Article VI.

The conflict in North Korea is further expanding. In 2003 North Korea resigned from the NPT after the USA declared North Korea a rogue state in 2002 and aimed for the regime's overthrow. From 2006 to 2016 six nuclear tests took place. These were disapproved by the UN Security Council starting with resolution 1718 from 14<sup>th</sup> of October 2006. Despite strict sanctions from the UN Security Council, Kim Jong Un, since taking-over of power from his father in 2011, pressed with nuclear weapons and strategic launch vehicle programs so far ahead that in December 2017 he was able to announce to possess one more nuclear rocket beside the Hwasong-15, which are to be able to fly 13,000 km and bring a nuclear head to the destination. Corresponding tests emphasize the information as credible. So, risen North Korea to the ranks of the nuclear powers and now assumes its nuclear capabilities as a guarantee for not being attacked by the United States. The development in Iran is

also a warning example for North Korea of how little can be held about US assurances. A possible resolution of this crisis is now completely unsettled.

#### 4.5. Iran

**Iran as an NPT state party was perennially suspected in a secret development of nuclear weapons, especially by Israel and the US. Therefore, the UN Security Council imposed strict economic sanctions for years against Iran. Additionally, even more drastic sanctions were imposed by the US and EU.**

After negotiations lasting 13 years, the dispute surrounding Iran's nuclear program finally reached a (provisional) conclusion. In Vienna on July 14, 2015, the five UN veto powers and Germany ("P5+1") concluded a comprehensive agreement – "Joint Common Plan of Action" (JCPOA).

According to this Plan of Action:

- Iran subjects itself to monitoring by the IAEA under application of the rules of the Additional Protocol to the NPT which allows for short-notice inspections. This applies in perpetuity. Similarly, the IAEA is allowed to inspect sites that are not directly part of any nuclear program; military sites are not excluded from this. However, Iran is permitted to object, which triggers a process to re-negotiate the inspection, lasting for up to 24 days.
- Iran is only permitted to further develop its enrichment technology in a very restricted manner. This is designed to ensure that even after a ten-year period of more severe restrictions, it still cannot then suddenly increase its enrichment. The centrifuges in the bunkered Fordo facility can be used again for research purposes, but not with nuclear material.
- The Arak heavy water reactor will be modernised and rebuilt so it cannot be used to produce weapons-grade plutonium. The previous reactor core, which was subject to serious concerns, will be dismantled and sent out of the country. New heavy water reactors will not be constructed.

- The IAEA questions on the suspected previous military nuclear program have to be answered.
- The economic sanctions on Iran will be lifted in February 2016, when the IAEA confirms that the country has fulfilled its commitments.
- A Joint Commission, including Iran and the P5+1, will be set up to deal with disputes. Under a condition of disagreement within the Joint Commission, the case will be handed over to the Security Council. If the Security Council concludes Iran is neglecting the commitment, Initial sanctions will enter into force. Termination of the agreement is not provided.

The agreement was explicitly approved by the UN Security Council in resolution 2231 on 20<sup>th</sup> of July 2015. Therefore, the agreement is binding under international law. Iran implements it scrupulously, what IAEA regularly confirmed.

Before the withdrawal of the sanctions was fully implemented and the goods traffic was once again fully guaranteed, President Trump denounced the agreement in May 2018. This happened on the basis of a non-contractual justification that Iran was creating turmoil in the Middle East and developing nuclear weapons delivery systems (missile technology is not a subject of the JCPOA). Neither the arbitration committee nor the Security Council have been contacted by the United States. Despite the protests of the other contracting states, which demanded to hold the agreement, the USA implemented the old sanctions aggravatedly again in November 2018 and announced economic sanctions and penalties against all states, which have not ended their economic relations completely with Iran by then.

As a matter of fact, most companies withdrew from Iran in order not to lose the more important US sales market. Iran contacted the International Court of Justice. The Court unanimously mandated easing of sanctions by the USA, as far as they affect humanitarian goods, foodstuff, medical supplies and spare parts for civil aviation. Secretary Pompeo declared immediately the USA would ignore the decision. In the main proceedings, probably there will be no decision before 2021. In light of these developments, Iran is considering a withdrawal from the NPT but

intends to continue to abide by the Joint Common Plan of Action as long as the other contracting states are trying to find ways to resolve the economic blockade.

In the conflict over Iran's supposed development of its own nuclear weapons, the attitudes and behaviour of most Western states is contradictory. They demand Iranian compliance with a treaty with which they continually fail to comply, particularly with respect to the obligation in Article VI for a prompt start to good-faith discussions about complete nuclear disarmament. With the threat of (military) sanctions against Iran, they also put themselves above Article II (4) of the UN Charter which bans all member states from exercising force. This "law of the jungle" does not count as legitimate international law.

Whoever – rightly – calls for Iran and North Korea to be free of nuclear weapons must also do similarly for Israel, Pakistan and India. They should also fulfil the obligations under international law for all nuclear-weapon states in Article VI of the NPT. "Double standards" will not secure the world against nuclear destruction.

## Core Demands from IALANA (Summary)

- A prompt start to serious discussions in good faith on effective steps towards nuclear disarmament with the goal of a comprehensive and internationally monitored “nuclear Global Zero”, and a successful conclusion to these negotiations.
- Cessation of all forms of “nuclear sharing” by Germany and other NATO non-nuclear-weapon states (Netherlands, Belgium, Italy, and Turkey).
- Germany free of nuclear weapons.
- Reduction in risks of proliferation from the exports and transfers of nuclear technology and expertise.
- Adherence to a phase-out of nuclear power.
- Affiliation of Germany to the Treaty on prohibition of Nuclear Weapons.
- No status of ‘nuclear-weapon power’ for the EU. Instead, EU to adhere to the NPT, plus EU support for the nuclear weapon ban treaty.
- Renunciation of the NATO “War Reservation”.
- Withdrawal of nuclear weapons from all NATO countries (that are not nuclear-weapon states).
- Changes to the NATO nuclear strategy.
- Ratification of the Comprehensive Nuclear-Test-Ban Treaty.
- No nuclear cooperation with non-NPT-states.
- NATO support for the Treaty on Prohibition of Nuclear Weapons and no obstruction.
- Strengthening of the NPT regime and IAEA monitoring as per the IAEA verification regime of the Additional Protocol.
- Drastic reduction of existing nuclear weapons arsenals of the nuclear-weapon states and cessation of modernisation programmes for warheads and delivery systems, even before the conclusion of a treaty on the “Global Zero” option.

## Annex

### 1. US Document- the „Rusk Letter“

The key document on the US interpretation of articles I and II NPT is entitled *Questions on the Draft Non- Proliferation Treaty asked by US Allies together with Answers given by the United States*. The Questions and Answers were enclosed with a letter from the Secretary of State, Dean Rusk, to President Johnson. The letter and the Questions and Answers were transmitted to the US Senate on 9 July 1968, along with other relevant documents, for consideration during the US Senate Ratification hearings on the NPT.

This interpretation was thereby made public on 9 July 1968, eight days after the NPT signing ceremony at which the first 56 nations had signed the treaty.

#### **Letter from the Secretary of State, Dean Rusk, to President Johnson and the US-Senate**

**"Questions on the Draft Non-Proliferation Treaty Asked by U.S. Allies Together With Answers Given by the United States", cited in: NPT Hearings, US Senate, 90-2, pp. 262-263**

#### **Questions on the Draft Non-Proliferation Treaty asked by US Allies together with Answers given by the United States**

##### **1. Q. What may and what may not be transferred under the draft treaty?**

A. The treaty deals only with what is prohibited, not with what is permitted.

It prohibits transfer to any recipient whatsoever of "nuclear weapons" or control over them, meaning bombs and warheads. It also prohibits the transfer of other nuclear explosive devices because a nuclear explosive device intended for peaceful purposes can be used as a weapon or can be easily adapted for such use.

It does not deal with, and therefore does not prohibit, transfer of nuclear delivery vehicles or delivery systems, or control over them to any recipient, so long as such transfer does not involve bombs or warheads.

2. Q. Does the draft treaty prohibit consultations and planning on nuclear defense among NATO members?

A. It does not deal with allied consultations and planning on nuclear defense so long as no transfer of nuclear weapons or control over them results.

3. Q. Does the draft treaty prohibit arrangements for the deployment of nuclear weapons owned and controlled by the United States within the territory of non-nuclear NATO members?

A. It 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.

4. Q. Would the draft prohibit the unification of Europe if a nuclear-weapon state was one of the constituent states?

A. It does not deal with the problem of European unity, and would not bar succession by a new federated European state to the nuclear status of one of its former components. A new federated European state would have to control all of its external security functions including defense and all foreign policy matters relating to external security, but would not have to be so centralized as to assume all governmental functions. While not dealing with succession by such a federated state, the treaty would bar transfer of nuclear weapons (including ownership) or control over them to any recipient, including a multilateral entity.



## **2. Bundestags-Drucksache 7/ 1994, p. 17**

On 20 April 1967, the NATO Council was informed of the American draft for the treaty and the six interpretations thereof. On April 28, the USA informed the USSR, which made no comment on the interpretations.

There were originally some concerns in the German government about the treaty, but these American interpretations (as in the US Document “Rusk Letter” reproduced) played a significant role in satisfying those concerns.

### 3. Letter to NATO Allies from the US Mission to NATO, 17 October 2016

ANNEX 1  
AC/333-N(2016)0029 (INV)



#### UNITED STATES MISSION TO THE NORTH ATLANTIC TREATY ORGANIZATION

October 17, 2016

Dear Allies,

We wanted to draw your attention to the OEWG final report which we believe proved to be unbalanced and unrealistic, especially in its recommendation to launch negotiations on a treaty banning nuclear weapons. For those Allies participating in the OEWG, we strongly encourage you to vote "no" on any vote at the UN First Committee on starting negotiations for a nuclear ban treaty.

At the Warsaw Summit, NATO Allies reaffirmed that deterrence, based on an appropriate mix of nuclear, conventional, and missile defense capabilities, remains a core element of NATO's overall strategy and that as long as nuclear weapons exist, NATO will remain a nuclear alliance. For this reason, we feel efforts to negotiate an immediate ban on nuclear weapons or to delegitimize nuclear deterrence are fundamentally at odds with NATO's basic policies on deterrence and our shared security interests.

In light of the current security environment, it is important for us to avoid introducing any doubt regarding Alliance unity or the Alliance's commitment to deter and defend against any threat to the safety and security of NATO populations. As we go forward, we should instead keep our focus on actions that build upon past progress, that are achievable, and that appropriately balance disarmament goals with the security environment. We hope that you find the non-paper useful, and look forward to consulting closely with you on this matter.

Sincerely,

Christina Cheshier  
CP(PM) Representative  
U.S. Delegation

**UNITED STATES NON-PAPER: "DEFENSE IMPACTS OF POTENTIAL  
UNITED NATIONS GENERAL ASSEMBLY NUCLEAR WEAPONS BAN TREATY"****Overview**

(1) Based on the work of the recently concluded UN General Assembly (UNGA) Open-Ended Working Group (OEWG) pursuant to UNGA Res 70/33, Austria, Brazil, Ireland, Mexico, Nigeria and South Africa have circulated a draft resolution for consideration in the UNGA First Committee (UNFC) designed to initiate negotiations in the UNGA on a legally-binding nuclear weapons ban treaty. Ban advocates seek to shift the focus from the proven step-by-step approach to nuclear disarmament, in keeping with our NPT commitments, to one that aims primarily to stigmatize nuclear weapons and nuclear deterrence without regard to whether the approach of ban advocates would make the international security situation better or worse. If the UNGA adopts such a resolution this fall, it will lead to the start of negotiations on a nuclear weapons ban treaty in 2017 under UNGA rules of procedure.

(2) The effects of a nuclear weapons ban treaty could be wide-ranging and degrade enduring security relationships. Allies and partners should not underestimate the breadth of potential impacts across security relationships or their potential to grow more severe over time. Because it does not account for the evolving security environment and aims to delegitimize the concept of nuclear deterrence upon which many U.S. allies and partners depend, such a treaty would undermine the long-standing strategic stability that has underpinned the international security structure since the end of World War II. Strategic stability and negotiated, verified reductions of nuclear forces, which the United States supports, are compatible objectives and the only pathway to eventual nuclear disarmament. The United States calls on all allies and partners to vote against negotiations on a nuclear weapons treaty ban, not to merely abstain. In addition, if negotiations do commence, we ask allies and partners to refrain from joining them.

**Military Implications of a Nuclear Weapons Ban**

(3) Annex II of the OEWG Synthesis Report adopted 19 August 2016 contains the suggested "elements" of a legally binding nuclear weapons ban. While we cannot identify definitive interpretations of a hypothetical text, at least nine of these suggested elements could have a direct impact on the U.S. ability to meet its NATO and Asia/Pacific extended deterrence commitments and the ability of our allies and partners to engage in joint defense operations with the United States and other nuclear weapon States. It should be emphasized that a treaty containing such elements could impact non-parties as well as parties, and could even have an impact prior to its entry into force as signatories take steps to implement their obligation not to defeat its object and purpose. Elements 1, 3, 5-6, 9, 14, 16-17, and 21, as quoted directly from Annex II would:

- 1) Prohibit "the development, testing including subcritical experiments and supercomputer simulations, production, acquisition, possession, stockpiling,

transfer, use and threat of use of nuclear weapons, as well as on the production of weapons usable fissile material";

- 3) Prohibit "participating in any use or threat of use [of] nuclear weapons";
- 3) Prohibit "participating in nuclear war planning";
- 3) Prohibit "participating in the targeting of nuclear weapons";
- 3) Prohibit "training personnel to take control of and use another State's nuclear weapons";
- 5) Prohibit "accepting any stationing, installation or deployment of nuclear weapons";
- 6) Prohibit "permitting nuclear weapons in national territory, including on permitting vessels with nuclear weapons in ports and territorial seas, permitting aircraft with nuclear weapons from entering national airspace, permitting weapons from being transited through national territory, permitting nuclear weapons from being stationed or deployed on national territory";
- 9) Prohibit "assisting, encouraging or inducing, directly or indirectly, any activity prohibited by the treaty";
- 14) "Rights and obligations for individuals, including national legislation to criminalize support for activities proscribed under the convention and protections for individuals reporting such activities ...."
- 16) "Dispute settlement [provisions], including ... the possibility of referring a dispute to the International Court of Justice and, if required, referring a situation to the United Nations Security Council";
- 17) "Requirement for States parties to adopt necessary legislative measures to implement their obligations under the convention, and to establish a national authority responsible for national implementation"; and
- 21) Require States "not to participate in any act prohibited, doctrines based on nuclear deterrence, and ensuring that participation in an alliance with a nuclear-armed state is compatible with their commitments and policies under the instruments".

(4) These elements could make it impossible to undertake nuclear planning or training (element 3) or nuclear-related transit through territorial airspace or seas (element 6). Beyond this, elements 9 and 21 could make it a treaty violation for a signatory if it were found "assisting, encouraging, or inducing, directly or indirectly" the United States (or other nuclear-weapon allies such as the United Kingdom or France) to say it would use—let alone to plan or train for using—nuclear weapons to defend the signatory. Signing the treaty could thus force a country to repudiate U.S. statements that it would defend the signatory with nuclear means. Such treaty elements could—and are designed by ban advocates to—destroy the basis for U.S. nuclear extended deterrence. Also, consistent with U.S. policy, since the United States neither confirms nor denies the presence or absence of nuclear weapons on U.S. naval ships, elements 5, 6 and 9 could make it impossible for these ships to conduct port calls in signatory countries. The proposed ban treaty and its constituent elements would preclude the United States from using nuclear-capable delivery systems to conduct assurance missions for U.S. allies. This would reduce the U.S. ability to reassure

allies of our commitment to their defense and thus affect our mutual security commitments and cooperation.

### Implications for NATO

(5) Allies have agreed repeatedly that nuclear weapons are a core component of NATO's deterrence and defense posture. This fact was reiterated in the 2010 Strategic Concept, the 2012 Deterrence and Defence Posture Review, and the 2014 and 2016 Summit Declarations in Wales and Warsaw respectively. In Warsaw, NATO Allies reiterated that the appropriate mix of capabilities, including nuclear, strengthens alliance cohesion, including the transatlantic link, through an equitable and sustainable distribution of roles, responsibilities, and burdens. A stance that delegitimizes nuclear deterrence would be inconsistent with these core concepts. Any signatory Ally could believe it was legally required, and could take actions, to block all NATO nuclear cooperation, whether or not the signatory actively participated in NATO nuclear burden-sharing arrangements.

(6) More specifically, the concept of nuclear burden-sharing—as embodied by forward-based U.S. nuclear weapons in Europe, and the dual capable aircraft mission with attendant security and surety responsibilities entrusted to certain Allies—could become untenable under elements 3, 5, 6, and 9. Element 6 could make transit of U.S. aircraft through Alliance airspace to transport, maintain, and upgrade U.S. nuclear weapons and components a treaty violation. The general prohibitions could also prevent Allies from providing conventional support to nuclear operations. Elements 1 and 3 could raise compliance questions in the staffing of nuclear-related positions at Allied Command Operations, Allied Command Transformation, and NATO Headquarters, particularly at senior levels. Elements 14 and 17 could put individual service-members at risk of violating host nation domestic law. The Nuclear Planning Group (NPG) construct, created in 1966, could be seen as running afoul of the treaty, as would participation in meetings of the NPG, the High Level Group (HLG), and other similar consultations. NATO exercises and training, both to ensure the safety and surety of nuclear weapons, and also the ability to deploy them effectively in the event of crisis or conflict, could fall under the treaty's prohibitions. More concrete aspects of military readiness, such as planning and coordination for potential conflict, could be prohibited. Although most Allies would choose to remain steadfast in their commitment to the core concepts set out in NATO's formative documents, others may feel pressured to pull back from their participation or block decisions of the NPG or HLG in support of NATO's nuclear deterrence capabilities—an outcome that could splinter Alliance consensus on its deterrence and defense posture.

## 5. Treaty on the Prohibition of Nuclear Weapons, Preamble, Art. 1, 5, 6, 7

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*The States Parties to this Treaty,*<sup>[...]</sup><sub>SEP</sub>

*Determined* to contribute to the realization of the purposes and principles of the Charter of the United Nations,

*Deeply concerned* about the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to completely eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances,

*Mindful* of the risks posed by the continued existence of nuclear weapons, including from any nuclear-weapon detonation by accident, miscalculation or design, and emphasizing that these risks concern the security of all humanity, and that all States share the responsibility to prevent any use of nuclear weapons,

*Cognizant* that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls, including as a result of ionizing radiation,

*Acknowledging* the ethical imperatives for nuclear disarmament and the urgency of achieving and maintaining a nuclear-weapon-free world, which is a global public good of the highest order, serving both national and collective security interests,

*Mindful* of the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing

of nuclear weapons,

*Recognizing* the disproportionate impact of nuclear-weapon activities on indigenous peoples,

*Reaffirming* the need for all States at all times to comply with applicable international law, including international humanitarian law and international human rights law,

*Basing* themselves on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, the rule of distinction, the prohibition against indiscriminate attacks, the rules on proportionality and precautions in attack, the prohibition on the use of weapons of a nature to cause superfluous injury or unnecessary suffering, and the rules for the protection of the natural environment,

*Considering* that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law,

*Reaffirming* that any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience,

*Recalling* that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

*Recalling* also the first resolution of the General Assembly of the United Nations, adopted on 24 January 1946, and subsequent resolutions which call for the elimination of nuclear weapons,

*Concerned* by the slow pace of nuclear disarmament, the continued reliance on

nuclear weapons in military and security concepts, doctrines and policies, and the waste of economic and human resources on programmes for the production, maintenance and modernization of nuclear weapons,

*Recognizing* that a legally binding prohibition of nuclear weapons constitutes an important contribution towards the achievement and maintenance of a world free of nuclear weapons, including the irreversible, verifiable and transparent elimination of nuclear weapons, and determined to act towards that end,

*Determined* to act with a view to achieving effective progress towards general and complete disarmament under strict and effective international control,

*Reaffirming* that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control,

*Reaffirming* also that the full and effective implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, which serves as the cornerstone of the nuclear disarmament and non-proliferation regime, has a vital role to play in promoting international peace and security,

*Recognizing* the vital importance of the Comprehensive Nuclear-Test-Ban Treaty and its verification regime as a core element of the nuclear disarmament and non-proliferation regime,

*Reaffirming* the conviction that the establishment of the internationally recognized nuclear-weapon-free zones on the basis of arrangements freely arrived at among the States of the region concerned enhances global and regional peace and security, strengthens the nuclear non-proliferation regime and contributes towards realizing the objective of nuclear disarmament,

*Emphasizing* that nothing in this Treaty shall be interpreted as affecting the inalienable right of its States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination,

*Recognizing* that the equal, full and effective participation of both women and



men is an essential factor for the promotion and attainment of sustainable peace and security, and committed to supporting and strengthening the effective participation of women in nuclear disarmament,

*Recognizing* also the importance of peace and disarmament education in all its aspects and of raising awareness of the risks and consequences of nuclear weapons for current and future generations, and committed to the dissemination of the principles and norms of this Treaty,

*Stressing* the role of public conscience in the furthering of the principles of humanity as evidenced by the call for the total elimination of nuclear weapons, and recognizing the efforts to that end undertaken by the United Nations, the International Red Cross and Red Crescent Movement, other international and regional organizations, non-governmental organizations, religious leaders, parliamentarians, academics and the hibakusha,

*Have agreed as follows:*

## **Article 1**

### **Prohibitions**

1. Each State Party undertakes never under any circumstances to:

(a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;

(b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;

(c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;

(d) Use or threaten to use nuclear weapons or other nuclear explosive devices;

(e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;

(f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;

(g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.

## **Article 5<sup>[L]</sup><sub>[SEP]</sub>**

### **National implementation**

1. Each State Party shall adopt the necessary measures to implement its obligations under this Treaty.

2. Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Treaty undertaken by persons or on territory under its jurisdiction or control.

## **Article 6**<sup>[L] [SEP]</sup>

### **Victim assistance and environmental remediation**

1. Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.
2. Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated.
3. The obligations under paragraphs 1 and 2 above shall be without prejudice to the duties and obligations of any other States under international law or bilateral agreements.

## **Article 7**<sup>[L] [SEP]</sup>

### **International cooperation and assistance**

1. Each State Party shall cooperate with other States Parties to facilitate the implementation of this Treaty.
2. In fulfilling its obligations under this Treaty, each State Party shall have the right to seek and receive assistance, where feasible, from other States Parties.
3. Each State Party in a position to do so shall provide technical, material and

financial assistance to States Parties affected by nuclear-weapons use or testing, to further the implementation of this Treaty.

4. Each State Party in a position to do so shall provide assistance for the victims of the use or testing of nuclear weapons or other nuclear explosive devices.

5. Assistance under this Article may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, non-governmental organizations or institutions, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, or national Red Cross and Red Crescent Societies, or on a bilateral basis.

6. Without prejudice to any other duty or obligation that it may have under international law, a State Party that has used or tested nuclear weapons or any other nuclear explosive devices shall have a responsibility to provide adequate assistance to affected States Parties, for the purpose of victim assistance and environmental remediation.



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