

E-Paper

Germany should support a ban on nuclear weapons

On the complementary nature of a Ban Treaty and the Non-Proliferation Treaty

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The five-yearly Review Conference of the Nuclear Non-Proliferation Treaty (NPT) is taking place from April 27 to May 22, 2015. In order to increase pressure for nuclear disarmament and to strengthen the non-proliferation regime, nuclear weapons need to be banned under international law, as other weapons of mass destruction already are. A ban treaty would complement and strengthen the NPT. Germany should therefore stand up for a ban on nuclear weapons at the Review Conference.

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Introduction

2015 marks the 70th year since the nuclear bombings of Hiroshima and Nagasaki. These events are deeply etched in humanity's consciousness and are a constant reminder that the world needs to be freed from the scourge of nuclear war. In this spirit and in order to prevent further nuclear weapons' proliferation, the Non-Proliferation Treaty (NPT) was opened for signature in 1968, the Review Conference of which will take place in New York from April 27 to May 22, 2015. Today, the NPT— with 190 state parties—has become the most important pillar of the nuclear arms control regime. However, the poor record of efforts on disarmament on the part of the nuclear weapon states has led to a hail of criticism from the non-nuclear weapon states.

It is in this context that the agreement between the P5 +11 with Iran, which was brokered in Lausanne on April 2, could be fortunate for the Review Conference in New York. Tehran seems to have accepted comprehensive inspections for the next ten years and restraints on their uranium enrichment in exchange for an easing of sanctions. This means that for now Iran has been successfully kept within the NPT. The North Korean precedent has not been repeated.² And yet this is a long way from being a revitalisation of the Treaty. A further weakening of the stumbling treaty regime due to a lack of disarmament progress simply appears to have been averted for the time being.

Essential building blocks in the Action Plan agreed at the 2010 Review Conference have not been implemented. The ad nauseam routine of putting non-nuclear weapon states off with a promise that disarmament measures will be taken at some point in the future has led to states questioning the framing of the debate on nuclear disarmament itself. The humanitarian impact of a nuclear weapon detonation has increasingly shifted into the centre of the debate, which was previously occupied solely by the military dimension. This development has led to three diplomatic conferences in the past two years, the last of which was the Vienna Conference of the Humanitarian Impact of Nuclear Weapons in December 2014. The most signifi-

1 The negotiating group consisting of the five permanent members of the UN Security Council (P5) and Germany (+1) were able to reach a settlement with Iran in Lausanne on April 2, 2015 on a ten-year framework agreement on its nuclear programme.

2 North Korea ratified the NPT on December 12, 1985, and announced its intention to withdraw from the Treaty on January 10, 2003, following the discovery of its illegal uranium enrichment programme by the US. North Korea withdrew on April 10, 2003.

cant political outcome of these conferences is the call, supported by a large number of states, for a ban on nuclear weapons under international law to be concluded in the near future. Such a ban treaty would not only delegitimise proliferation but also the use and possession of nuclear weapons. Those states supporting a ban anticipate that it will create more pressure on the nuclear weapon states to disarm.

How would a possible ban treaty relate to the Non-Proliferation Treaty? Would a ban complement the existing arms control regime and close the gap in international law? Or would it lead to further division between the nuclear and the non-nuclear states, unhinging the treaty and ultimately driving the final nail into the coffin of the most important pillar of nuclear arms control? What role does Germany play in this controversy and what are the baseline conditions under which the German government is obliged to define its behaviour towards a possible ban? This paper attempts to deal with these issues and to give a short overview of the background and development of the so-called Humanitarian Initiative (I), examines Germany's point of departure (II) and discusses the dynamic relationship between a potential ban treaty and the Non-Proliferation Treaty (III). It concludes with action recommendations for the German government at the 15th Review Conference of the Non-Proliferation Treaty (IV).

I. The Humanitarian Initiative and the Path to a Ban

The so-called Humanitarian Initiative³ raises two basic questions: whether nuclear weapons are in compliance with international humanitarian law; and whether a society can cope with the consequences of the use of nuclear weapons – questions that have frequently been suppressed in the debate up until now. The argument that nuclear deterrence is the insurance that guards against use and its consequences was meant to nip any such discussion in the bud. Behind this lies the delusion—created by fear of each other—that the threat of mutually assured destruction (MAD) brings about security and peace. In reality, the doctrine of nuclear deterrence has already brought the world to the brink of nuclear war twice.⁴ Nevertheless,

3 More on the Humanitarian Initiative can be found here: Leo Hoffmann-Axthelm et al. (2015): *Atomwaffen ächten. Die humanitäre Notwendigkeit eines Verbotsvertrages*. Berlin (in German); John Borrie (2014): *Humanitarian Reframing of Nuclear Weapons and the Logic of a Ban*. In: *International Affairs*, vol. 90, no 3, pp. 625-646.

4 During the Cuban missile crisis in 1960-1962 and as a result of a false alarm by a Soviet early warning satellite in September 1983. Arnold Piok (2003): *Kennedys Kuba-Krise – Planung, Irrtum und*

this insanity of unlimited willingness to escalate remains largely unchanged in military strategies today, a quarter of a century after the fall of the Wall, and is currently regaining importance through tensions between NATO and Russia.

Game-theory reasoning and the absence of a third use of nuclear weapons since Hiroshima and Nagasaki are presented as evidence for the validity of deterrence doctrine. The Humanitarian Initiative breaches this field of vision and rocks the taboo—it insists on thinking things through to their end. What would happen if nuclear weapons were actually used, whether intentionally, by accident or without authorisation? How might this be viewed under international law and how could one deal with the consequences? In particular: what can be concluded from answering the above questions?

International humanitarian law sets limits on the use of violence that must be adhered to in an armed conflict.⁵ To prevent unnecessary suffering, weapons use is only permitted when it discriminates between soldiers and civilians and when proportionality is ensured. Weapons of mass destruction cannot—by their very nature—comply with these principles. Their use cannot discriminate between combatants and non-combatants, nor can they be used proportionately. Since biological and chemical weapons are already outlawed⁶, nuclear weapons are the only weapons of mass destruction left that do not conform with humanitarian law but as yet are not subject to the appropriate consequences of a ban on production and possession.

The international community met in Oslo (Norway) in March 2013 for the first states' conference on the humanitarian impact of nuclear weapons. The International Federation of Red Cross and Red Crescent Societies, UN humanitarian organisations and the civil society coalition International Campaign for the Abolition of Nuclear weapons (ICAN) also took part. Two

Glück am Rande des Atomkrieges 1960–1962. Reihe diplomica, 1. Auflage, Marburg (in German); Peter Anthony (2014): *The Man Who Saved the World*, documentary film.

5 The body of international law of armed conflict known as *ius in bello* has been increasingly codified in various agreements: Hague Conventions of 1899 and 1907; the four agreements comprising the Geneva Convention of 1949 and their two additional protocols of 1977.

6 Biological Weapons Convention of April 10, 1972, entered into force on March 26, 1975; Chemical Weapons Convention of January 13, 1983, entered into force on April 29, 1997

further conferences took place in 2014: in Nayarit (Mexico) und Vienna (Austria).⁷ The participating states at all three conferences concluded that any use of nuclear weapons would have catastrophic humanitarian consequences. The International Committee of the Red Cross emphasised that it was impossible to provide effective aid for the victims.⁸ Therefore, they maintain that a humanitarian obligation exists to ensure that these weapons are never used again, in other words to ban and eliminate them. On October 20, 2014, 155 states called in the UN General Assembly for nuclear weapons to be outlawed, due to their catastrophic humanitarian effects.⁹ In concluding the Vienna Conference on December 9, 2014, Austria made a pledge to cooperate with all relevant stakeholders “to fill the legal gap” known as the Austrian Pledge.¹⁰

II. Germany's point of departure

Germany has a hybrid role in nuclear disarmament. On the one hand the promotion of disarmament and its own renunciation of nuclear weapons' possession firmly belongs to Germany's self-perception in foreign affairs.¹¹ On the other hand, the Federal Republic relies on

7 The Vienna Conference on the Humanitarian Impact of Nuclear Weapons in December 2014 was the largest of the conference series. 158 took part, including the nuclear weapons states USA, UK, India and Pakistan.

8 Peter Maurer, President of the International Committee of the Red Cross (2014): Statement at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons, December, Vienna.

9 United Nations, General Assembly, First Committee, 69th session (2014): Joint Statement on the humanitarian consequences of nuclear weapons. Delivered by Ambassador Dell Higgie of New Zealand. October, New York.

10 Austrian Federal Ministry for European and International Affairs (2014): “Austria calls on all states parties to the NPT to renew their commitment to the urgent and full implementation of existing obligations under Article VI, and to this end, to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons and Austria pledges to cooperate with all stakeholders to achieve this goal”, Austrian Pledge. December, Wien. Further: “Austria pledges to cooperate with all relevant stakeholders, States, international organisations, the International Red Cross and Red Crescent Movements, parliamentarians and civil society, in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks.”

11 The German Federal Republic participated in numerous disarmament and arms control treaties and has been a driving force in conventional and nuclear arms control since the end of the Cold War.

the NATO doctrine of deterrence and US nuclear weapons are deployed on its territory, within the framework of so-called nuclear sharing. How did this dichotomy between renunciation and participation come about, that causes German disarmament policy to be pulled in two opposing directions and to even sometimes paralyse it?

Even though the renunciation of nuclear weapons tends to be depicted as a voluntary act, it was in fact due to a military-political corset in which a pruned-back post-war Germany found itself after 1949. It was a time when Germany was supposed to be neither one thing nor the other: Neither German state was allowed to become an independent military power, let alone a nuclear power, nor were they to do without any kind of defence in the long run. As the first frost of the Cold War spread across Europe, a divided Germany became the central arena for the arms race and the deployment area for US and Soviet nuclear weapons. Not only the Bundeswehr, but also the DDR Volksarmee were massively involved in the planning for deployment and use of nuclear weapons in their respective alliances. ¹²

The German Federal Republic fosters a kind of hybrid existence since the Parliamentary act of March 25, 1958,¹³ as a state participating in so-called nuclear sharing that does not possess its own nuclear weapons but actively relies on a policy of mutually assured destruction. While most US nuclear weapons have been withdrawn from Germany, there are still about 10-20 US nuclear bombs stored at the Büchel German air force base. ¹⁴ The Bundeswehr provides Tornado fighter jets and pilots for their use who regularly train for actual bombing in an emergency. The Federal government ensures its influence on nuclear strategy, nuclear weapons' deployment and targeting through these arrangements.

Thus a deeply seated conflict of interest and identity arises in German foreign policy over the issue of complete renunciation and a ban on nuclear weapons. The peace policy tradition of adhering to the logic of disarmament clashes with the path of dependency arising out of the Cold War that exists in military policy. The foreign policy image of a sovereign peace power

Germany therefore is held in high esteem internationally and seen as a trustworthy advocator of disarmament and arms control.

¹² Harald Nielsen (1998): Die DDR und die Kernwaffen – Die nukleare Rolle der Nationalen Volksarmee im Warschauer Pakt. Nuclear History Program (NHP), Baden-Baden (in German).

¹³ Hans Karl Rupp (1970): Außerparlamentarische Opposition in der Ära Adenauer: Der Kampf gegen die Atombewaffnung in den fünfziger Jahren. Köln (in German).

¹⁴ Robert S. Norris, Hans Kristensen (2011): US tactical nuclear weapons in Europe, 2011, Bulletin of Atomic Scientists, Nuclear Notebook.

is constrained within the parameters of alliance security policy. A sort of light nuclear weapon state emerges. When in doubt, Germany chooses to keep all its options open.

III. A Ban Treaty and the Non-Proliferation Treaty – the nuclear arms control regime of the future

Some observers fear that the call for a ban treaty could divide states and weaken the Non-Proliferation Treaty.¹⁵ They say that it contradicts the step-by-step approach to nuclear disarmament and would deepen the already existing split between the nuclear and non-nuclear weapon states.¹⁶ In their view, seeking radical solutions fails to recognise the need for all NPT parties to exercise patience and stamina.¹⁷ The reaction of states' parties to the Austrian Pledge at the NPT Review Conference is therefore anticipated with great suspense.

Concern about the stability of the NPT is not without reason. Its fragility does not, however, stem from a potential ban treaty. The source is rather to be found within the NPT itself and arises from the discrimination between nuclear and non-nuclear weapon states that is anchored therein. The nuclear weapon states' parties were lent the right to possess nuclear weapons, while the non-nuclear weapons states were obligated to renounce them. In return, the nuclear weapon states declared their willingness to disarm, in the spirit of a nuclear weapon-free world,¹⁸ a promise that has not been fully implemented. This tacit assumption of privilege by the nuclear weapon states is the seed from which conflict repeatedly sprouts. The Humanitarian Initiative is both a symptom and a result of the discontent of the non-nuclear weapon states over the refusal of the nuclear weapon states to disarm substantially. The conflict rooted in the NPT has broken out of the usual disarmament fora in this form.

¹⁵ See also the arguments and counterarguments in Tom Sauer (2015): *The NPT and the Humanitarian Initiative: Towards and beyond the 2015 NPT Review Conference*. Deep Cuts Working Paper, no. 5, p.8f.

¹⁶ The nuclear weapon states recognised by the NPT are: Russia, USA, China, United Kingdom and France.

¹⁷ See also Robert Wood, U.S. Special Representative to the Conference on Disarmament (2014): *U.S. Perspectives on the Opportunities and Challenges of Nuclear Disarmament*, Vienna, December 17.

¹⁸ The obligation for the nuclear weapon states to disarm is stipulated in Article VI of the Non-Proliferation Treaty.

With the call for a ban treaty, it returns to the halls of the NPT.¹⁹ The mounting frustration of the non-nuclear weapon states at the lack of loyalty to the treaty by the nuclear weapon states has real basis. It is now 25 years since the Cold War ended, and there has been no significant progress towards the implementation of the obligation to comprehensively disarm enshrined in the NPT. The arsenals have been greatly reduced.²⁰ However, they still exceed any dimension that can be imagined for a security ratio. At the last NPT Review Conference in 2010, an action plan was agreed upon that included important disarmament measures, as well as the establishment of a zone free of weapons of mass destruction in the Middle East. Essential elements of this action plan have yet to be implemented.²¹

The credibility of the nuclear weapon states has suffered badly over time.²² The disappointment over Obama's failed Global-Zero Initiative of 2009 is considerable. The memory of his historic promise in Prague to free the world from nuclear weapons has faded. Six years later, all the nuclear powers are undertaking massive modernisation programmes and are improving the operational capability of their nuclear arsenals.²³ Especially Russia, China, Pakistan and the USA.²⁴ Russia and the US still possess more than 90% of the world's nuclear weapons. It would be unfair to put the blame solely on the US President when the most recent initiative for further bilateral reductions after New START came from the Obama administration. However, the non-nuclear weapon states are no longer satisfied with excuses of

19 The conflict over nuclear disarmament is the source of the so-called Humanitarian Initiative. Its first official statement was recorded in the final document of the 2010 Review Conference: „The Conference expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all states at all times to comply with applicable international law, including international humanitarian law.“ NPT Review Conference (2010): Final Document, NPT/CONF.2010/50, vol. 1.

20 The number of nuclear weapons was approx. 65,000 in 1986, today the estimate is approx. 16,000. Hans M. Kristensen, Robert S. Norris (2014): Bulletin of the Atomic Scientists. Nuclear Notebook.

21 Reaching Critical Will (2015): The NPT Action Plan monitoring report.

22 For more on the crisis of the nuclear arms control regime, see Alexander Kmentt (2013): How Divergent Views on Nuclear Disarmament Threaten the NPT. In: Arms Control Today, vol. 43, no. 10; Alexei Arbatov (2015): An Unnoticed Crisis: the End of History for Nuclear Arms Control? On: Carnegie Moscow Center Website.

23 John Mecklin (2015): Disarm and Modernize. In: Foreign Policy Website.

24 The Economist (2015): Nuclear Weapons: The New Nuclear Age. 7 März 2015.

domestic political constraints and references to an unfavourable military-political context, such as the crisis over Ukraine.

Through a ban treaty, the conflict over a lack of nuclear disarmament that presently smoulders within the confines of the NPT can be openly dealt with in the context of both treaties. Only non-nuclear weapon states or nuclear weapon states that have committed to completely disarm can become treaty parties.²⁵ The nuclear weapon states will thus come under more pressure. Would the already-fractured NPT therefore fall apart? Certainly not, since nuclear disarmament is just the outlet needed to stabilise the NPT. It is the refusal to disarm that constantly affects the balance of the treaty. States that join a ban treaty do not have the slightest interest in a collapse of the non-proliferation regime. The NPT is a kind of insurance that they cannot do without, just in the same way as already-existing regional nuclear weapon-free zones²⁶ are dependent on the NPT remaining intact. Joining an expanded nuclear weapon-free zone would not alter this existential interest.

According to the logic of inherent political interests, it is not possible to decouple a Ban Treaty and the Non-Proliferation Treaty. They augment each other and exist through their dynamic relationship that would—through the struggle for equilibrium—prevent ossification on either side. Their relationship is not competitive but complementary. Ultimately, a nuclear arms control regime of the future would emerge from their convergence that would—under international law—ensure the realisation of a nuclear weapon-free world.

IV. Recommendations for the German government

Removing the taboo preventing debate on a ban treaty would enable the German government to discover a new path towards a nuclear weapon-free world. Up until now it has been accepted that Global Zero can only be achieved by following the NPT track. Yet the same goal can mostly be reached by more than one path and it is better to keep them all open, rather than running into a dead-end with just one. The relationship of a ban treaty and the

²⁵ Similar to the Biological and Chemical Weapons Conventions in which the possessor states have an obligation to complete disarmament and elimination.

²⁶ Altogether, there are currently six nuclear weapon-free zones covered by treaties: the Antarctic, Latin America/Caribbean states, South Pacific, Mongolia, South-East Asia, Africa, Central Asia and the former GDR/West Berlin.

NPT is not a question of either/or, it is rather one of not only/but also. This is also valid for Germany's positioning on this issue.

On the other hand, doesn't Germany have an interest in maintaining influence and reputation with its allied nuclear weapon states, if necessary even at the cost of achieving a nuclear weapon-free world? Might not their influence and reputation be threatened by the delegitimation of nuclear weapons? The correlation between the possession of nuclear weapons with power and prestige is reflected by the fact that all five NPT nuclear weapon states are also permanent members of the UN Security Council. Historically speaking, this is not a causal connection. But the association of nuclear weapons with geopolitical potency creates a dangerous incentive to other states to reach for the "superbomb". Indeed, Germany does have a politically motivated interest in maintaining influence and reputation with the US, UK and France for its own security. However, in the interest of human security the German foreign policy strategy of mutual support and public diplomacy requires detaching themselves from nuclear weapons.²⁷

Germany's membership in NATO does not obligate it to take part in nuclear sharing.²⁸ If it were to take the political initiative to differentiate between alliance loyalty and a nuclear pact then Germany could rid itself of its constricting and hybrid role. Other NATO host country states that traditionally promote disarmament, such as Belgium and the Netherlands, would very probably follow suit and should therefore be informed. Norway, Denmark and Iceland have already made a first step towards a ban with their support of the joint statement on the humanitarian consequences of nuclear weapons.²⁹ Credible amendments to the nuclear strategies of the nuclear powers and the last remaining nuclear alliance are crucially needed to strengthen the legitimacy and stability of the NPT. This also applies to: a cessation of keeping nuclear weapons on high alert (dealerting); provision of negative security assuranc-

²⁷ The International Committee of the Red Cross makes this argument: „(...) weapons that risk catastrophic and irreversible humanitarian consequences cannot seriously be viewed as protecting civilians or humanity as a whole.“ ICRC (2015): Nuclear Weapons: Ending a Threat to Humanity, Statement of 18 February 2015.

²⁸ The North Atlantic Treaty does not contain any provisions on this point. There are different opinions within NATO as to the role of nuclear weapons but no NATO member state is obligated to take part in nuclear sharing or to deploy nuclear weapons on their territory.

²⁹ United Nations, General Assembly, First Committee, 69th session (2014): Joint Statement on the humanitarian consequences of nuclear weapons. Delivered by Ambassador Dell Higgie of New Zealand. October, New York.

es for non-nuclear weapon states;³⁰ and a revocation of the doctrine of nuclear deterrence. Germany should work towards such detente in nuclear policies—both within NATO and in its role as intermediary to Russia.

In doing so, Germany has no need to worry about its image. Quite the opposite is true: Germany would demonstrate that influence and reputation can in fact grow, detached from a nuclear capability. Berlin has a special responsibility to achieve a nuclear weapon-free world. Germany could prove that a regional power can do without nuclear weapons completely and world politics can be effectively shaped without using potency-enhancing nuclear appliances. The transition from being a light nuclear weapon state to German Zero would be a massive push towards Global Zero. A ban treaty could also accelerate the long overdue withdrawal of nuclear weapons deployed in Germany.³¹ Germany's foreign policy image and disarmament credibility would stand to gain much from this.

It is therefore time for the dynamics of the debate on a ban treaty to be translated into a dynamic for action. This year's NPT Review Conference offers an opportunity for this. In New York, the German government should support the Austrian Pledge that urges negotiations on a legal ban on nuclear weapons to begin. Germany should declare their alignment to Austria's initiative in the Review Conference and encourage other states to also join. A ban treaty and the Non-Proliferation Treaty are the foundations for building a nuclear weapon-free world. Both of them are vital and they need to create a reciprocal relationship to one another. The goal of a worldwide elimination of all weapons of mass destruction should be reason enough, in terms of security policy, for Germany to take a role in constructing the nuclear arms control architecture of the future.

30 Legally-binding commitment of nuclear weapon states to refrain from using nuclear weapons on a non-nuclear weapon state is meant here.

31 Deutscher Bundestag (2010): Deutschland muss deutliche Zeichen für eine Welt frei von Atomwaffen setzen, Drucksache 17/1159. Introduced by the parliamentary parties CDU/CSU, SPD, FDP and Bündnis 90/Die Grünen (in German).

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