



Hold-out or Silent Supporter?

Implications of the Humanitarian Initiative on Nuclear Weapons for Germany

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- Even though the world community agrees on the need for nuclear disarmament, states differ in their visions of how to achieve this goal. The recently rejuvenated »humanitarian initiative« points to the catastrophic humanitarian consequences of nuclear weapons and aims to accelerate progress on nuclear disarmament by legally prohibiting nuclear weapons. This policy paper examines the political, legal, military, and economic implications of the German government's decision to engage in the »humanitarian initiative« on three levels: (1) supporting the »Humanitarian Pledge« (2) negotiating a treaty banning nuclear weapons, and (3) signing it. The implications are discussed in the context of the domestic and a wider international security debate, including NATO and the European Union.
- Engaging in the »humanitarian initiative« has potentially both favorable and unfavorable implications for Berlin, mainly political ones at the international level. Potential negative repercussions include antagonizing its NATO allies, triggering a risky debate over the Alliance's nuclear deterrence posture, and weakening Berlin's standing in NATO and as a result its power as a mediator in efforts to bring about a peaceful solution to the war currently being waged in Ukraine. Potential positive repercussions include Berlin living up to its image as a supporter of nuclear disarmament, fulfilling its legal obligations to support nuclear disarmament under article VI of the Nuclear Non-Proliferation Treaty, and solving the problem of finding a replacement for the nuclear capable Tornado aircraft.
- Whether Germany would join a treaty banning nuclear weapons depends on at least three factors: first, on developments within NATO and in the European security order; second, on the number of states joining such a treaty and the pressure they would exert on the German government; and third, on the German government's conviction that the treaty would not antagonize nuclear weapons states and undermine progress toward nuclear disarmament.



Contents

1. Current National Situation and Positions	4
2. NATO Context	7
3. The EU Context	9
4. Description of Scenarios	10
5. Potential Implications	11
5.1 Signing the »Humanitarian Pledge«	11
5.2 Participation in Negotiations on a Treaty Banning Nuclear Weapons	12
5.3 Signing a Treaty Banning Nuclear Weapons	13
6. Conclusions	15

A world without nuclear weapons is a widely-shared goal among the international community of states. Yet individual governments and civil society groups have different visions of how to reach this goal. With their recent public initiative, the »initiative on the humanitarian consequences of nuclear weapons,« Switzerland and the International Committee of the Red Cross (ICRC) have joined with civil society groups in pointing to the inhumane nature of these weapons and to the fact that they are the only remaining type of weapons of mass destruction yet to be prohibited by an international legal instrument. In so arguing, Switzerland and the ICRC have broadened the nuclear weapons disarmament debate centered on security considerations by adding the humanitarian dimension.¹

The »humanitarian initiative« is mirrored in different statements, activities, and concepts centered around arguments over the humanitarian consequences of nuclear weapons. In the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) final document, member states expressed their deep concern at »the catastrophic humanitarian consequences that would result from the use of nuclear weapons.«² Among the relevant activities was a series of state-sponsored conferences, held in March 2013 in Oslo (Norway), in February 2014 in Nayarit (Mexico), and in December 2014 in Vienna (Austria), at which government representatives together with international organizations (e.g. ICRC/IFRC) discussed the humanitarian consequences of nuclear weapons. In his summary of the Nayarit conference, the Chair disconcerted many of the state representatives by making a direct link with a ban on nuclear weapons. In his statement we read that »the broad-based and comprehensive discussions on the humanitarian impact of nuclear weapons should lead to the commitment of States and civil society to reach new international standards and norms, through a legally binding instrument.«³ The Austrian government picked up this idea and, taking all of the participants of

the 2014 Vienna conference by surprise, introduced the so-called »Austrian Pledge« calling on all state parties to the NPT to »fill the legal gap for the prohibition and elimination of nuclear weapons.«⁴ The Pledge, which in the aftermath of the 2015 NPT Review Conference was renamed the »Humanitarian Pledge,« does not mention directly how this legal gap should be filled. However, in the interpretation of the civil society organization the International Campaign to Abolish Nuclear Weapons (ICAN), this ultimately means negotiating a multilateral treaty banning nuclear weapons that clarifies their legal status and stigmatizes their possession.

In the light of the failure of the 2015 NPT Review Conference (27 April to 22 May 2015) to agree on a consensus document, state parties disappointed with the pace of nuclear disarmament may commence negotiations on a treaty banning nuclear weapons, with or without the participation of nuclear weapons states (NWSs). Given that 98 states already belong to nuclear weapons-free zones and further states have declared their interest in negotiating a treaty banning nuclear weapons, the question arises whether »fence-sitting states like Germany, Belgium, the Netherlands, and many other NATO non-nuclear weapons states (NNWSs), as well as Japan will keep standing together with the few NWS.«⁵

This paper considers three hypothetical scenarios. In the first scenario, Germany actually signs the »Humanitarian Pledge.« In the second scenario, several states make substantial concessions in order to participate in negotiating a treaty banning nuclear weapons. On this scenario, Germany must decide whether it prefers to engage in the process and have some influence on the outcome, or to abstain from it. In the third scenario, with or without German participation in negotiations, states agree on the text of a treaty banning nuclear weapons. In that case, Berlin will have to weigh up the costs and benefits of signing.

This policy paper investigates the political, legal, and economic implications of German support for these activities.

1. I am very grateful to Prof. Dr. Götz Neuneck, Dr. Oliver Meier, Christian Alwardt, Prof. Dr. Michael Brzoska, Ulrich Kühn, Martin Krüger, Otfried Nassauer (BITS), and Franziska Baumann for helpful comments on the earlier drafts or particular aspects of this paper.

2. Final Document, 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2010/50, point 80, p. 12, http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20%28VOL.I%29.

3. Second Conference on the Humanitarian Impact of Nuclear Weapons – Chair's Summary, 14.02.2014, <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/nayarit-2014/chairs-summary.pdf>.

4. Austrian Pledge, Vienna Conference on the Humanitarian Impact of Nuclear Weapons, 9 December 2014, http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_Austrian_Pledge.pdf.

5. Tom Sauer, The NPT and the Humanitarian Initiative: Towards and Beyond the 2015 NPT Review Conference; Deep Cuts Working Paper No. 5, April 2015, p. 9, http://deepcuts.org/images/PDF/DeepCuts_WP5_Sauer_UK.pdf.

In doing so, it hopes to offer some food for thought, to heighten awareness of what is at stake, and to increase engagement with the idea of nuclear disarmament on the part of governments. In order to present an overview of the problem, the paper will begin by outlining the current national situation in Germany and the positions of the main actors, and will then proceed to analyze how these positions are embedded in NATO and in the wider international security debate.

1. Current National Situation and Positions

All German governments have favored a »realistic path« toward a world free of nuclear weapons based on a »step-by-step or building-block-approach« (reduce, eliminate, and prohibit, as opposed to outlaw and eliminate).⁶ The government suggests starting with measures like de-alerting, establishing transparency and confidence-building measures, promoting the entry into force of the Comprehensive Nuclear-Test-Ban Treaty, or advancing negotiations of a treaty banning the production of fissile material for use in nuclear weapons or other explosive devices. Berlin does not »practically and politically« see alternatives to »the difficult path of further negotiations.«⁷ Its concerns are at least threefold. First, it does not believe that a treaty banning nuclear weapons without NWS involvement will be effective.⁸ On the contrary, it believes that such a treaty may »antagonize important players and thereby, against our best intentions, negatively impinge on the implementation of the NPT, the NPT Action Plan and on the Review Conference in 2015.«⁹ Second, the German government subscribes to the notion that »a world without nuclear weapons will not simply be today's world minus nuclear weapons.«¹⁰ For the federal government, nuclear disarmament takes place in a strategic context and its implementation re-

quires shaping the international order and establishing international rules.¹¹ Third, German officials argue that there is no reason to assume that the ongoing step-by-step process cannot deliver further progress on disarmament.

The German government actively participated at the Oslo, Nayarit, and Vienna conferences devoted to the humanitarian consequences and risks associated with nuclear weapons. At the Oslo conference, it acknowledged that »no single country could be in a position to tackle the catastrophic effects of a nuclear explosion on its own.«¹² At the Nayarit conference, it stressed that »everything should be done to further strengthen the »nuclear taboo.«¹³ Nevertheless, at the Vienna conference, it voiced a clear preference for a step-by-step approach within the NPT framework.

The international community expressed its difference of opinion over the »humanitarian initiative« by filing several statements. In April 2014, Berlin backed a statement by the Non-Proliferation and Disarmament Initiative (NPDI), a coalition of states devoted to implementing the 2010 NPT Review Conference Action Plan. In its communiqué, the NPDI urges »all States to reiterate their deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons, as expressed in the 2010 NPT Review Conference Final Document.«¹⁴ At the same time, the German government refused to support the United Nations General Assembly First Committee 2012 »Swiss statement«¹⁵ calling for an intensification of efforts to outlaw nuclear weapons or the »New Zealand statement« condemning the use of nuclear weapons »under any circumstances.«¹⁶ It also rejects the 2014

6. Statement by Ambassador Christoph Eichhorn, Deputy Federal Commissioner for Arms Control and Disarmament at the 3rd Conference on Humanitarian Impact of Nuclear Weapons, 9 December 2014, Vienna, http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abrüstung/HINW14/Statements/HINW14_Statement_Germany.pdf.

7. Ibid.

8. Statement by Germany during the Second Conference on the Humanitarian Impact of Nuclear Weapons, 13–14 February 2014 in Nayarit/Mexico, <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/nayarit-2014/statements/Germany.pdf>.

9. Ibid.

10. George P. Shultz, William J. Perry, Henry A. Kissinger, Sam Nunn; Deterrence in the Age of Nuclear Proliferation, *The Wall Street Journal*, 7 March 2011, <http://www.wsj.com/articles/SB10001424052748703300904576178760530169414>.

11. Deutscher Bundestag Stenografischer Bericht 90. Sitzung, 4 March 2015, Plenarprotokoll 18/90, p. 8536, <http://diibt.bundestag.de/doc/btp/18/18090.pdf>.

12. Statement by Susanne Baumann, Head of Nuclear Disarmament and Arms Control Division at the Ministry of Foreign Affairs at the 1st Conference on Humanitarian Impact of Nuclear Weapons, 4 March 2013, Oslo.

13. Statement by Germany during the Second Conference on the Humanitarian Impact of Nuclear Weapons, see footnote 8.

14. Statement of the 8th Ministerial Meeting of the NPDI, Hiroshima, 12 April 2014, <http://www.mofa.go.jp/files/000035199.pdf>.

15. Joint Statement on the humanitarian dimension of nuclear disarmament, 67th session of the United Nations General Assembly First Committee, New York, 22 October 2012, <http://www.acronym.org.uk/sites/default/files/UN%20First%20Committee%202012%2034-nation%20HUMANITARIAN%20STATEMENT.pdf>.

16. Joint Statement on the Humanitarian Consequences of Nuclear Weapons, 2015 Review Conference of the Parties to the Treaty on the

»Austrian Pledge«, recently renamed the »Humanitarian Pledge,« which calls for the stigmatization, prohibition, and elimination of nuclear weapons by filling the legal gap within the NPT framework.¹⁷ As always in diplomacy, the devil is in the detail. The »Humanitarian Pledge« affirms that »it is in the interest of the very survival of humanity that nuclear weapons are never used again, under any circumstances.« The last phrase is unacceptable to Germany because it is incompatible with the NATO doctrine on nuclear deterrence, as two Ministry of Foreign Affairs officials informed the present author on condition of anonymity.¹⁸ Another passage in the text refers to nuclear weapons as bearing »unacceptable humanitarian consequences and associated risks« rather than speaking in terms of an »explosion« of a nuclear bomb. For the German government, however, a nuclear weapon stored in a vault or transported by plane does not have the same consequences or pose the same risk as the actual use of a nuclear weapon.

Instead, Berlin signed the 2014 »Australian statement« that enjoyed the support of almost all of the NATO member states. The Ministry of Foreign Affairs considers the »Australian statement« and the »New Zealand statement« to be 80% complementary but the former lacks the controversial formulations mentioned above. It also recognizes the need to engage NWSs in the debate and acknowledges the security and humanitarian aspects of the discussion in the context of a NPT-based solution.¹⁹

While the current German government seems to be generally sympathetic to the »humanitarian initiative« and believes that »at some point in time on the way down to Zero a Nuclear Weapons Convention will be negotiated,«²⁰ today it rather sees the initiative as a tool for strengthening awareness of the need for further nuclear disarmament and non-proliferation and for provid-

ing impulses for progress.²¹ However, it does not regard the initiative as a game-changer.

A cautious spirit prevails also in the parliamentary discussions. In January 2014, the governing coalition fractions rejected a request by the left-wing opposition party The Left (Die Linke) to condemn nuclear weapons.²² In December 2014, they rejected a resolution by the parliamentary opposition Alliance 90/The Greens (Bündnis 90/Die Grünen) calling upon the government to join the »humanitarian initiative« and support civilian disarmament initiatives.²³ Even though rejecting opposition resolutions is standard procedure in the Bundestag, it is worth mentioning that the resolution was vetoed by the Committee on Health, by the Committee on the Environment, Nature Conservation, Building and Nuclear Safety, by the Committee on Human Rights and Humanitarian Aid, by the Committee on Economic Cooperation and Development, and by the Sub-Committee on Disarmament Arms Control and Nonproliferation.²⁴ This is consistent with the promises made by the parties in their election programs. None of the current coalition parties, neither the Christian Democratic Union of Germany (CDU), the Christian Social Union in Bavaria (CSU), nor the Social Democratic Party of Germany (SPD), gave any assurances in their election campaigns on canceling participation in NATO nuclear weapons-related activities, nor did they make any mention of the »humanitarian initiative«. In contrast, the oppositional Alliance 90/The Greens presented withdrawal of the remaining American nuclear weapons (B61 bombs) from Europe as a first step in arms control and disarmament within the context of NATO.²⁵ The Left called for immediate withdrawal of the

Non-Proliferation of Nuclear Weapons, 28 April 2015, http://www.un.org/en/conf/npt/2015/statements/pdf/humanitarian_en.pdf.

17. Austrian Pledge, see footnote 4.

18. Interviews conducted on 17 and 21 April 2015.

19. Joint Statement on the humanitarian consequences of nuclear weapons, 69th session of the United Nations General Assembly First Committee, 20 October 2014, <https://australia-unscc.gov.au/2014/10/humanitarian-consequences-of-nuclear-weapons/>.

20. Statement by Germany during the Second Conference on the Humanitarian Impact of Nuclear Weapons, see footnote 8.

21. Bericht der Bundesregierung zum Stand der Bemühungen um Rüstungskontrolle, Abrüstung und Nichtverbreitung sowie über die Entwicklung der Streitkräftepotenziale (Jahresabrüstungsbericht 2014), p. 6, <http://dip21.bundestag.de/dip21/btd/18/042/1804270.pdf>.

22. Beschlussempfehlung und Bericht des Auswärtigen Ausschusses (3. Ausschuss) zu dem Antrag der Abgeordneten Inge Höger, Wolfgang Gehrcke, Jan van Aken, weiterer Abgeordneter und der Fraktion Die Linke – Drucksache 18/287 – Atomwaffen ächten, Deutscher Bundestag Drucksache 18/39918, 30.01.2014, <http://dip21.bundestag.de/dip21/btd/18/003/1800399.pdf>.

23. Beschlussempfehlung und Bericht des Auswärtigen Ausschusses (3. Ausschuss) zu dem Antrag der Abgeordneten Agnieszka Brugger, Annalena Baerbock, Marieluise Beck (Bremen), weiterer Abgeordneter und der Fraktion Bündnis 90/Die Grünen – Drucksache 18/3409 – Neue Dynamik für nukleare Abrüstung – Der Humanitären Initiative beitreten, Deutscher Bundestag Drucksache 18/4217, 04.03.2015, <http://dip21.bundestag.de/dip21/btd/18/042/1804217.pdf>.

24. Ibid.

25. Zeit für den grünen Wandel, Bundestagswahlprogramm 2013 von Bündnis 90/Die Grünen, p. 314, http://www.gruene.de/fileadmin/user_upload/Dokumente/Wahlprogramm/Wahlprogramm-barrierefrei.pdf.

B61 bombs, declared its opposition to the stationing of a modernized weapon in Germany and to the allocation of funds for modernizing the Tornado aircraft used to deliver the bomb, and called for legal condemnation of nuclear weapons.²⁶ At the same time, only 29 out of 631 parliamentarians (13 from the Left, 12 from the SPD, 1 former SPD member, and 4 from Alliance 90/The Greens) signed the ICAN Global Parliamentary Appeal for a Nuclear Weapons Ban.²⁷

Three days before the start of the 2015 NPT Review Conference, the coalition fractions in the German Bundestag adopted a motion introduced by the governing CDU/CSU and SPD parties on a statement entitled »Lead the NPT Review Conference to Success.«²⁸ In their statement they encourage the government also to participate in discussions, including those within civil society, on different approaches to complete nuclear disarmament and in the discussion on the humanitarian consequences of nuclear weapons in particular. The opposition parties, The Left and Alliance 90/The Greens, voted against the motion. Inge Höger representing The Left accused the government of inaction over the withdrawal of American nuclear weapons from Germany, arguing that »disarmament starts at home,« and criticized the motion for containing insufficient detail concerning actions toward nuclear disarmament.²⁹ Agnieszka Brugger speaking for the Alliance 90/The Greens criticized the governing parties' lack of ideas and lack of enthusiasm for the »humanitarian initiative.«³⁰ Brugger also suggested that the motion under review represented a step backward by comparison with the one adopted almost unanimously (without the votes of The Left) ahead of the 2010 NPT Review Conference. In that motion, the then governing coalition parties, CDU, CSU, and the Free Democratic Party (FDP), together with the then opposition parties, SPD and Alliance 90/The Greens, called upon the German

government to campaign energetically within NATO and toward the United States for a withdrawal of American nuclear weapons from Germany.³¹

Although civil society opposes nuclear weapons and supports nuclear disarmament, it does not exert comparable pressure to that generated at the time of the Cold War. While non-governmental organizations like ICAN maintain close contacts with the German government and regularly discuss the »humanitarian initiative« with the Ministry of Foreign Affairs, the general public is not deeply involved in the debate despite having strong opinions on nuclear weapons. A May 2006 survey indicated that only 12% of the German respondents were aware that U.S. nuclear weapons were stationed in their country, while a further 31.7% of the respondents stated it was »likely« that such weapons were stationed on German soil.³² At the same time, in a 2005 survey 76% of the respondents expressed support for the removal of the B61 from Germany.³³ This correlates with the 76% of the respondents in a 2007 survey who thought that the use of nuclear weapons by NATO would never be justified.³⁴ Moreover, a 2008 opinion poll revealed that 89% of Germans regard nuclear weapons as being in violation of international law and 84% support the elimination of nuclear weapons stationed in Germany.³⁵ In a spring 2014 survey, 80% of the interviewees urged the German government to intensify its efforts to promote arms control and disarmament.³⁶ The Special Commissioner for Peace of the Evangelical Church in Germany has recently appealed to political leaders to continue to make every effort to achieve a global ban on nuclear weapons and called upon the federal government to send a clear message supporting withdrawal of nuclear weapons from

26. 100 Prozent sozial. Wahlprogramm zur Bundestagswahl 2013 – Beschluss des Dresdner Parteitags, p. 56, http://www.die-linke.de/fileadmin/download/wahlen2013/bundestagswahlprogramm/bundestagswahlprogramm2013_langfassung.pdf.

27. Global Parliamentary Appeal for a Nuclear Weapons Ban, The International Campaign to Abolish Nuclear Weapons, <http://www.icanw.org/projects/appeal/>.

28. Antrag der Fraktionen der CDU/CSU und SPD »Die NVV-Überprüfungskonferenz zum Erfolg führen«, Drucksache 18/4685, 21.04.2015, <http://dip21.bundestag.de/dip21/btd/18/046/1804685.pdf>.

29. Deutscher Bundestag, Stenografischer Bericht 101. Sitzung, 24.04.2015, Berlin, p. 9709–9710, <http://dipbt.bundestag.de/dip21/btp/18/18101.pdf#P:9708>.

30. Ibid., p. 9712.

31. Antrag der Fraktionen CDU/CSU, SPD, FDP und Bündnis 90/Die Grünen »Deutschland muss deutliche Zeichen für eine Welt frei von Atomwaffen setzen«, Drucksache 17/1159, 24. 03. 2010, <http://dip21.bundestag.de/dip21/btd/17/011/1701159.pdf>.

32. Nuclear Weapons In Europe: Survey Results in Five European Countries, Greenpeace International, 25 May 2006, <http://www.greenpeace.org/international/Global/international/planet-2/report/2006/6/nuclear-weapons-in-europe-survey.pdf>.

33. Atomwaffen: Ausstieg ankündigen, Der Spiegel 18/2005, 2 May 2005, p. 19, <http://magazin.spiegel.de/EpubDelivery/spiegel/pdf/40254083>.

34. Global Poll Finds Varied Views on Nuclear Weapons, 18 August 2007, <http://www.nuclearfiles.org/menu/library/opinion-polls/nuclear-weapons/global-poll-nuclear-weapons.html>.

35. Meinungen zu Atomwaffen, Internationale Ärzte für die Verhütung des Atomkrieges/Ärzte in sozialer Verantwortung e.V., 3 Juli 2008, <http://www.ipnw.de/commonFiles/pdfs/Atomwaffen/Atomwaffen2008.pdf>.

36. Review 2014 – A Fresh Look at Foreign Policy, Federal Foreign Office, p. 26, <http://www.auswaertiges-amt.de/cae/servlet/contentblob/699442/publicationFile/202977/Schlussbericht.pdf>.

Büchel,³⁷ a call systematically supported by the Synod of the Evangelical Church in Germany.³⁸ Already in 2010, together with the Roman Catholic Bishop and President of the German section of Pax Christi, Heinz Josef Algermissen, they called on the German government to support and engage in the multilateral negotiations of a nuclear weapons convention,³⁹ an agreement governing the verifiable elimination of nuclear weapons within a fixed time frame.

Some experts in Germany argue that a nuclear ban treaty represents a »shortcut« since it offers a »simple solution to a complicated problem.«⁴⁰ Evidently, a treaty banning nuclear weapons would not mean an immediate elimination of nuclear weapons. It would create a norm stigmatizing the bomb, but it would not offer any practical solution to how to proceed with further disarmament. This would be even less the case without the NWSs on board. Analogously, whereas nuclear weapons-free zones began as a pure NNWS initiative that was subsequently acknowledged in part by the NWSs, weapons-free zones did not necessarily accelerate nuclear disarmament. However, it cannot be denied that they made an immense contribution to advancing the debate. At the same time, NNWSs may enjoy greater success by participating in the traditional nuclear disarmament process and being rewarded with some transparency, instead of antagonizing the NWSs and losing influence over what form nuclear disarmament will take. As such, the most recent report of the Commission on Challenges to Deep Cuts, a project supported by the Ministry of Foreign Affairs, recommends that »States Parties to the Treaty [NPT – authors' note] should diligently seek to prevent any backsliding on already agreed-upon measures and should make the 2010 Action Plan the prime point of

departure and point of reference for any discussion on nuclear arms control.«⁴¹

2. NATO Context

Within NATO, member states refrain from making any reference to or associating themselves with the »humanitarian initiative«. Ahead of the 2015 NPT Review Conference, NATO member states engaged in internal discussions and positioned themselves on the »Austrian Pledge,« reaching a consensus decision not to support this initiative, according to a senior official from NATO International Staff.⁴² Adopting the 2010 New Strategic Concept and the 2012 Deterrence and Defence Posture Review (DDPR), long before the »humanitarian initiative« stirred the debate, NATO member states affirmed the alliance's nuclear status, defined nuclear weapons as »a core component« of its collective defense and deterrence tool-kit, and backed a gradual approach to nuclear disarmament in accordance with the NPT framework. The allies view the NPT as a »cornerstone of global nuclear non-proliferation efforts ... and an essential basis for the pursuit of nuclear disarmament.«⁴³ At the annual NATO Weapons of Mass Destruction conference in March 2015, NATO Deputy Secretary General Alexander Vershbow stressed that despite growing frustration, care needs to be taken to »maintain the integrity of the NPT and its entire web of obligations.«⁴⁴

Nevertheless, NATO membership does not prevent member states from taking positions of their own. Despite the collective stance, Norway, Denmark, and Iceland openly associated themselves with the 2013 »New Zealand statement« condemning the use of nuclear weapons »under any circumstances,«⁴⁵ regarding it as a declara-

37. Atomwaffen gehören abgeschafft, nicht modernisiert, Pressemitteilung, Evangelische Kirche in Deutschland, <http://www.ekd.de/friedensbeauftragter/presse/26195.html>.

38. Beschluss zur nuklearen Abrüstung. Beschluss der 11. Synode der Evangelischen Kirche in Deutschland auf ihrer 3. Tagung zur nuklearen Abrüstung, Hannover, 07. bis 10. November 2010, <http://www.evangelische-friedensarbeit.de/artikel/2010/beschluss-zur-nuklearen-abruistung>.

39. Neue Chancen schaffen für eine Welt ohne Atomwaffen. Verhandlungen über Atomwaffenkonvention beginnen. Gemeinsame Erklärung des Friedensbeauftragten des Rates der Evangelischen Kirche in Deutschland (EKD), Renke Brahm, und des Präsidenten der deutschen Sektion von Pax Christi, Bischof Heinz Josef Algermissen, 4. August 2010, http://www.ekd.de/presse/pm189_2010_atomwaffen.html.

40. For example see Oliver Meier speaking in »The 2015 Non-Proliferation Treaty Review Conference: What role for the European Union?«, Institute for European Studies, Vrije Universiteit Brussel, 23 Feb 2015 <http://www.ies.be/other/2015-non-proliferation-treaty-review-conference-what-role-european-union>.

41. Strengthening Stability in Turbulent Times, Second Report of the Deep Cuts Commission, April 2015, Institute for Peace Research and Security Policy at the University of Hamburg, p. 22, http://www.deepcuts.org/images/PDF/Second_Report_of_the_Deep_Cuts_Commission_English.pdf.

42. Interview conducted by the author on 28 April 2015.

43. NATO's Positions Regarding Nuclear Non-Proliferation, Arms Control and Disarmament and Related Issues, 2009, http://www.nato.int/nato_static/assets/pdf/pdf_topics/20091022_NATO_Position_on_nuclear_non-proliferation-eng.pdf.

44. Preventing WMD proliferation: NATO's engagement with its global partners, Speech by NATO Deputy Secretary General Alexander Vershbow at the annual NATO conference on WMD arms control, disarmament and non-proliferation, 2 March 2015, http://www.nato.int/cps/bu/natohq/opinions_117732.htm.

45. Joint Statement on the Humanitarian Consequences of Nuclear Weapons, 68th session of the United Nations General Assembly First

tion of principle rather than as a statement of policy. Germany does not make this distinction, a Ministry of Foreign Affairs official told the present author.⁴⁶

Beyond this, NATO member states have never demanded from each other that they should make use of or refrain from any particular legal instrument. Rather, decisions have been taken by member states according to domestic timelines, security interests, and priorities, as well as legal positions. Individual NATO member states develop independent national policies on nuclear weapons, and even place restrictions on participation in nuclear weapons-related activities. Denmark, Norway, and Spain do not allow deployment of nuclear weapons on their territories in peacetime. Iceland and Lithuania have banned the stationing of nuclear weapons on their soil at any time.⁴⁷

Moreover, NATO documents do not pose a legal barrier to the adoption of a treaty banning nuclear weapons. The North Atlantic Treaty itself says nothing about nuclear weapons. The 2010 New Strategic Concept acknowledges the sovereignty principle and supports member states' political flexibility by stating that »national decisions regarding arms control and disarmament may have an impact on the security of all Alliance members; [w]e are committed to maintain, and develop as necessary, appropriate consultations among Allies on these issues.«⁴⁸ However, while in practice states are free to choose their own policy, recent media reveals that the United States urged some allies to not support the »Austrian Pledge.«⁴⁹

German membership in NATO deeply influences the federal government's nuclear policy, as it needs to consider the wider spectrum of its allies' positions and interests, not least because of Berlin's key role in NATO nuclear deterrence. As a practical expression of the alliance's principle of nuclear burden sharing, Germany agrees to

the stationing of approximately 10–20 American free fall nuclear bombs at the Büchel air base, delegates 46 PA-200 Tornado aircrafts of the 33rd Fighter Bomber Squadron, and trains its pilots to deliver the B61.

The former coalition government comprising the CDU, CSU, and the FDP tried to spur a debate within NATO on its 2010 Strategic Concept, the follow-up process to the DDRP and the subsequent work of the recently-established NATO Special Advisory and Consultative Arms Control, Disarmament and Non-Proliferation Committee to reconsider the requirements and the role of the American nuclear weapons deployed on the European continent. Due to the firm opposition of several NATO member states to a unilateral withdrawal of B61 bombs from Europe, Germany accepted the consensus that they should continue to be stationed and that their removal should be made contingent on successful political negotiations between the United States and Russia.⁵⁰

Meanwhile, the governing CDU/CSU and SPD coalition indicated in its coalition agreement that Germany has an interest in participating in NATO strategic discussions and planning as long as nuclear weapons play a role in the alliances' strategic concept.⁵¹ At the 2014 NPT Preparatory Committee, the German government stated that, while it is »resolved to help create the conditions for a world without nuclear weapons in accordance with the goals of the NPT,« it remains »firmly committed to its obligations as a member of the North Atlantic Alliance.«⁵² At the 2014 Nayarit conference, Germany also acknowledged the deterrent effect of the alliance's nuclear weapons, stating that they »have greatly contributed to preventing armed conflict between the NATO-Alliance and the Warsaw Pact.«⁵³ As such, it continues to ascribe a security dimension to nuclear weapons.

Next to its embedding in NATO nuclear sharing, the German government's future decision on whether to

Committee, New York, 21 October 2013.

46. Interview conducted on 17 April 2015.

47. Lothe Eide, S., A ban on nuclear weapons? What's in it for NATO?, Nuclear Weapons Project Policy Paper No. 5, International Law and Policy Institute, February 2014, <http://nwp.ilpi.org/wp-content/uploads/2015/03/PP05-14-NATO-and-a-BAN.pdf>.

48. Active Engagement, Modern Defence; Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization, 19–20 November 2010, p. 25, http://www.nato.int/strategic-concept/pdf/Strat_Concept_web_en.pdf.

49. USA ga klar atomvåpen-beskjed til Norge, NRK, 17 March 2015, http://www.nrk.no/norge/usa-ga-klar-atomvapen-beskjed-til-norge-1.12265873?hc_location=ufi; cf. Japan not to support Austrian document seeking nuclear weapons ban, Kyodo, 13 March 2015, <http://english.kyodonews.jp/news/2015/03/341031.html>.

50. Deutscher Bundestag Stenografischer Bericht 90, p. 9, see footnote 11.

51. Deutschland Zukunft Gestalten. Koalitionsvertrag zwischen CDU, CSU und SPD, Berlin, 14 December 2013, p. 118, <http://www.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf>.

52. Statement by Ambassador Michael Biontino During the General Debate of the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons', New York, 30 April 2014, p. 3, <http://papersmart.unmeetings.org/media/2/2927566/germany.pdf>.

53. Statement by Germany during the Second Conference on the Humanitarian Impact of Nuclear Weapons, see footnote 8.

support the »Humanitarian Pledge« and on whether to participate in negotiations on a treaty banning nuclear weapons will depend on developments within NATO and its security environment. The current political setting in Europe is deeply shaped by the slow dissolution of the European multilateral arms control arrangement, the lack of further nuclear disarmament negotiations, and diminishing trust in security assurances and written agreements, as well as the increase in military activity and confrontational rhetoric from beyond NATO's Eastern border. The more Russia abstains from instruments of cooperative security – as manifested in its violation of the Budapest Memorandum on Security Assurances by annexing the Crimean Peninsula, its alleged violations of obligations under the Intermediate-Range Nuclear Forces Treaty, and its withdrawal from the Joint Consultative Group dealing with compliance with the Treaty on Conventional Armed Forces in Europe – the more emphasis NATO member states will place on alliance security commitments, including an increased propensity to rely on nuclear weapons.⁵⁴ With its actions in Crimea, Russia challenged the foundations of the European security architecture and fundamentally shook the confidence of NATO member states in Russian politics. At the same time, growing instability within the European security environment increases the relevance of NATO for the allies and the value member states attach to the cohesion of the alliance as a diplomatic signal of its resolve. As a result, NATO is seriously discussing options to broaden and intensify rather than to weaken cooperation within the nuclear sharing arrangement, according to a senior official from NATO International Staff.⁵⁵

Participation in the negotiations on a treaty to ban nuclear weapons would be on par with terminating NATO membership, according to a Ministry of Foreign Affairs officer.⁵⁶ Participation in negotiations leading to signing the treaty is regarded as incompatible with the organization's declared intent to remain a nuclear alliance.

54. See for example: MFA statement on information about Russia's non-compliance with the INF Treaty, Ministry of Foreign Affairs of the Republic of Poland, 30 July 2014, http://www.msz.gov.pl/en/news/mfa_statement_on_information_about_russia_s_non_compliance_with_the_inf_treaty, Karl-Heinz Kamp, Nuclear Implications of the Russian-Ukrainian Conflict, NDC Research Report, April 2015, <http://www.ndc.nato.int/download/downloads.php?icode=446>; Thomas Frear, List of Close Military Encounters Between Russia and the West, March 2014 – March 2015, ELN, 12 March 2015 <http://www.europeanleadershipnetwork.org/mediaLibrary/2015/03/11/4264a5a6/ELN%20Russia%20-%20West%20Full%20List%20of%20Incidents.pdf>.

55. Interview conducted by the author on 28 April 2015.

56. Interview conducted by the author on 17 April 2015.

3. The EU Context

Despite growing interest and awareness of the »humanitarian initiative«, as shown by the increased participation by EU member states in the conferences on the humanitarian consequences of nuclear weapons (with 23 states attending in Norway, 20 in Mexico, and 26 in Vienna), the EU remains divided. When it comes to nuclear disarmament, it comprises three groups.⁵⁷ The first consists of the so called »drivers of disarmament« who actively support the »humanitarian initiative« and reject the strategic value to nuclear weapons. Austria and Ireland lead this group. Together with Cyprus, Denmark, and Malta, they supported the 2013 »New Zealand statement« condemning the use of nuclear weapons »under any circumstances.« Second, there is the group of »guarded supporters« consisting of 15 states including Germany (13 countries supporting the »Australian statement« together with Latvia and Luxembourg). They support the initiative but, instead of a treaty banning nuclear weapons, they prefer a pragmatic, step-by-step approach to further nuclear disarmament and connect the humanitarian with the security aspect of nuclear weapons. This bloc does not believe in »quick fixes.« It promotes a multilateral nuclear disarmament process that is »as inclusive as possible, particularly through the involvement of states possessing nuclear weapons« and avoids »fragmentation of the international community which would delay the entire process of nuclear disarmament.«⁵⁸ The third group consists of France and Great Britain, the only signatories of the NPT with nuclear weapons in the European Union. Both countries oppose the initiative, perceiving it as destructive of the existing process.⁵⁹ They do not support any joint UN General Assembly statement on the issue. However, even between these two countries differences are apparent. While Great Britain participated

57. Jenny Nielsen, Marianne Hanson, The European Union and the Humanitarian Initiative in the 2015 Non-Proliferation Treaty Review Cycle, EU Non-Proliferation Consortium, Non-Proliferation Papers No.41, December 2014, p.5, <http://www.sipri.org/research/disarmament/eu-consortium/publications/nonproliferation-paper-41>.

58. Building blocks for a world without nuclear weapons. Working paper submitted by Australia, Belgium, Canada, Colombia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Japan, Lithuania, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden and Ukraine, NPT/CONF.2015/PC.III/WP.23, 15 April 2014, http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2015/PC.III/WP.23.

59. United Nations General Assembly High Level Meeting on Nuclear Disarmament. Statement on behalf of France, the United Kingdom and the United States by Minister Alistair Burt Parliamentary Under Secretary of State United Kingdom of Great Britain and Northern Ireland, 26 September 2013, http://www.un.org/en/ga/68/meetings/nucleardisarmament/pdf/GB_en.pdf.

in the 2014 Vienna conference, France declined to attend. France only accepts a gradual step-by-step disarmament process and argues that »[u]ndermining existing forums ... by creating parallel processes, and calling into question the step-by-step approach of the 2010 Action Plan, as certain recent initiatives do, will not advance nuclear disarmament. Quite the contrary.«⁶⁰ The United Kingdom recognizes the humanitarian consequences that could result from the use of nuclear weapons, but does not support initiatives to negotiate a treaty banning nuclear weapons and calls instead for solutions within the NPT context.⁶¹ The »humanitarian initiative« has also become an issue in British domestic political discourse.⁶²

The European Union neither has a common policy on the possession and use of nuclear weapons nor a detailed vision on nuclear disarmament, other than a general commitment to work toward this goal.⁶³ Due to the rift over the humanitarian consequences of nuclear weapons, the EU member states could not agree on the wording for the 2015 NPT Review Conference statement. The Council of the European Union merely adopted resolutions acknowledging the divergences among the member states over the »humanitarian initiative«. There we read that »[t]he Council notes the severe consequences associated with nuclear weapons use and emphasizes that all States share the responsibility to prevent such an occurrence from happening. The Council further notes, in this respect, the ongoing discussions on the consequences of nuclear weapons, in the course of which different views are being expressed, including at an international conference organized by Austria, in which not all EU Member

States participated.«⁶⁴ Eventually, Federica Mogherini, the High Representative of the European Union for Foreign Affairs and Security Policy, read out the conclusions of the Council of the European Unions as the statement on behalf of the EU member states to the 2015 NPT Review Conference.

A great deal is at stake when it comes to formulating a common position for two reasons. First, the Union is considering a review of its European Security Strategy and potentially of the EU Strategy against the Proliferation of the Weapons of Mass Destruction. Second, the issue of nuclear weapons as an instrument of deterrence fits in the broader controversy between European Atlanticists and Gaullists, which recently flared up again over the old project to establish a European army. Taken together, these issues not only have the potential to spark a debate over the necessity of American involvement in the European security environment. More than that, they could potentially open a Pandora's Box of questions concerning political and financial support requirements for the British and French nuclear arsenals. Because nobody wants to risk a stalemate on the wider agenda, member states tend to avoid discussing nuclear disarmament and focus instead on non-proliferation.

4. Description of Scenarios

Taking into consideration its current position and the complexity of the German government's decision-making context, I would like to present three hypothetical scenarios. In the first scenario, Germany will need to weigh up the costs and benefits of supporting the »Humanitarian Pledge.« In the second scenario, some of the Scandinavian states break with the NATO consensus to abstain from the »humanitarian initiative« and, in a chain reaction, win the backing of the other NATO NNWSs that also agree to the deployment of American nuclear weapons on their territory (i.e. Belgium, Italy, the Netherlands, and Turkey) in making substantial concessions to participate in the negotiation of a treaty banning nuclear weapons. On this scenario, Germany must decide whether to join the initiative or to abstain from it. In the third scenario, several states agree on a text for the treaty banning

60. Third Session of the Preparatory Committee for the 2015 Nuclear Non-Proliferation Treaty Review Conference Statement by Mr Jean-Hugues Simon-Michel Ambassador, Permanent Representative of France to the Conference on Disarmament Head of the French Delegation, p.7, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom14/statements/28April_France.pdf.

61. The United Kingdom of Great Britain and Northern Ireland General Statement to the Third Preparatory Committee of the 2015 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons, 28 April 2014, p. 4, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom14/statements/29April_UK.pdf.

62. Trident Renewal, UK Parliament House of Commons, Daily Hansard – Debate, 20 January 2015, <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150120/debtext/150120-0001.htm#15012040000001>.

63. Fight against the proliferation of weapons of mass destruction: EU Strategy against Proliferation of Weapons of Mass Destruction, Council of the European Union, 15708/03, 10 December 2003, paragraph 21, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015708%202003%20INIT>.

64. Council conclusions on the Ninth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, The Council of the European Union, 20 April 2015, p.4 point 11, <http://www.consilium.europa.eu/en/press/press-releases/2015/04/20-council-conclusions-npt/>.

nuclear weapons, with or without German participation in negotiations. In this scenario, Berlin has to decide whether to sign the document or not. The remainder of the paper will consider the political, legal, military, and economic implications of each decision for Germany.

A prepared text of a Nuclear Weapons Convention aimed at the "adoption of legally binding, verifiable and enforceable instruments culminating in a comprehensive prohibition and destruction of all nuclear weapons under effective controls"⁶⁵ already exists. However, because of its provisions concerning nuclear weapons and nuclear material, neither civil society groups and initiatives nor the »Humanitarian Pledge« refer to it directly. As a result, there is no text to which a detailed discussion of the implications of a treaty banning nuclear weapons could refer.

For the purposes of the present policy brief, a treaty banning nuclear weapons would consist of a concise and straightforward multilateral treaty declaring a blanket prohibition on the development, acquisition, possession, transfer, deployment, and use of nuclear weapons. Such a treaty would also be expected to contain provisions limiting military cooperation with nuclear-armed states, and provisions on financing, investment, and trade with commercial entities involved in the production, maintenance or other aspects of nuclear weapons and their delivery vehicles. According to the civil society organizations involved, the treaty itself would not contain detailed disarmament or verification provisions, but would specify the conditions under which nuclear-armed states could join. It would be open to any state, but it would not require the membership of nuclear-armed states in order to enter into force. It would seek to delegitimize nuclear weapons. This is analogous to the legal regime outlawing chemical weapons.⁶⁶ First, the 1925 Geneva Protocol prohibited the use of chemical weapons in warfare, while the 1993 Chemical Weapons Convention widened the scope of the prohibition and banned their development,

production, stockpiling, and use, and called for their destruction.

According to the Vienna Convention on the Law of Treaties, to which Germany is a party, the consent of a state to be bound by a treaty is expressed by its signature and successful ratification. Although a signature without ratification does not imply any legal obligations, it obliges states to refrain from acts that would defeat the object and purpose of the treaty. Because Germany is a law-abiding state, I will not make any special distinction between signing and ratification. I assume that Germany would not violate the spirit of a treaty after signing it.

5. Potential Implications

5.1 Signing the »Humanitarian Pledge«

Theoretically speaking, joining the »Humanitarian Pledge« could represent a small step toward reducing NATO's reliance on nuclear weapons. At the end of the day, it is also in the interest of Germany and other NATO member states »that nuclear weapons are never used again, under any circumstances,« even under the concept of nuclear deterrence. Signing the pledge is a statement with a normative character without any legal, economic, or military implications. However, it could have political implications within the alliance.

In theory, Berlin has the right to object to the other NATO member states' rigid position on the »humanitarian initiative«, just as other NATO member states opposed its initiative on the unconditional withdrawal of the B61 bombs. However, the German government does not want to sign the »Humanitarian Pledge« in order to avoid the risk of sparking an internal debate on NATO's nuclear posture at the present moment. Berlin fears that a renewal of the nuclear deterrence debate within the alliance might lead to an increase in the B61's role in NATO's doctrine, according to a Ministry of Foreign Affairs officer.⁶⁷ Although NATO has not yet increased the role of nuclear deterrence, any discussion of weakening nuclear sharing would currently be counterproductive in reducing the B61's role in NATO's documents, a senior official at NATO International Staff confirmed.⁶⁸ As such,

65. Model Nuclear Weapons Convention, Convention on the Prohibition of the Development, Testing, Production, Stockpiling, Transfer, Use and Threat of Use of Nuclear Weapons and on Their Elimination, 62nd Session of the United Nations General Assembly, A/62/650, April 2007, http://inesap.org/sites/default/files/inesap_old/mNWC_2007_Unversion_English_N0821377.pdf.

66. Chair's Summary. Second Conference on the Humanitarian Impact of Nuclear Weapons, Nayarit, 14 February 2014, p.3, <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/nayarit-2014/chairs-summary.pdf>.

67. Interview conducted on 17 April 2015.

68. Interview conducted on 28 April 2015.

Berlin prefers to minimize any potential harm by trying to preserve the doctrinal status quo.

Another reason for Germany to act cautiously within NATO is its mediator role in engaging Russia and Ukraine to find a peaceful solution to the current war in Ukraine. Together with French President Hollande, Ukrainian President Poroshenko, and Russian President Putin, Chancellor Merkel negotiated the Minsk II ceasefire agreement in February 2015. In order to maintain credibility and fulfill its stabilizing mission effectively, Berlin needs the support of its allies. At the same time, it is anxious to mitigate any overreaction on the part of NATO member states and to preserve what remains of the stability of the European security structure.

At the same time, signing the »Humanitarian Pledge« is not the only way to support the spirit of the »humanitarian initiative.« Germany could for example withdraw its reservation to the Additional Protocol (I) to the 1977 Geneva Conventions. The protocol prohibits using indiscriminate attacks on civilian population and objects (article 51 and 52) and obliges to protect the natural environment against widespread, long-term and severe damage which could threaten the health or survival of the population (article 55). The use of weapons of mass destruction would most probably violate these provisions. However, Germany declared to apply this prohibition exclusively to conventional weapons. By withdrawing this reservation, the use of all weapons of mass destruction, including nuclear weapons, would be juristically considered illegal for Germany.

Simultaneously, supporting the »humanitarian initiative« does not preclude the federal government from participating in negotiations of a treaty banning nuclear weapons or acceding to it.

5.2 Participation in Negotiations on a Treaty Banning Nuclear Weapons

Depending on the outcome of the 2015 NPT Review Conference, some countries which are frustrated by the slow pace of nuclear disarmament may call for negotiations on a treaty banning nuclear weapons. Even though the German government currently assumes that participation in negotiation of a treaty banning nuclear weapons amounts to terminating NATO membership,

this assumption seems questionable. In fact, some member states regard the deployment of American nuclear weapons in Europe as the glue that holds the alliance together. As a result of historical developments, Germany happens to be one of the countries in which these weapons are stationed. Nevertheless, it would not be the first NATO member state to opt out of nuclear sharing. In the past, the United States unilaterally withdrew its nuclear weapons from its bases in Spain and Greece, though both countries remain part of the alliance. This is because NATO's *raison d'être* does not reside in nuclear deterrence or in nuclear weapons. NATO's fundamental and enduring purpose is to safeguard the freedom and security of all its members by political and military means, and nuclear weapons represent just one of several available tools for achieving this purpose. Another is NATO's conventional deterrence based on superiority in terms of capabilities and technology *vis-à-vis* its neighbors. Moreover, Germany is the second-largest contributor to the NATO budget. As such, it supports a wide range of NATO activities and capabilities, including but not limited to nuclear sharing. The German government's argument is also less than convincing because NATO adopted a nuclear disarmament course and included appropriate language supporting nuclear disarmament aspirations in principle in its 2010 Strategic Concept and in the 2012 DDPR, specifically in response to German diplomatic efforts.⁶⁹ Thus, the vision of a world without nuclear weapons and NATO are not mutually exclusive.

As with the »Humanitarian Pledge,« negotiating a treaty banning nuclear weapons would not entail any legal, military, or economic costs for Germany. It might, however, have political repercussions.

Whereas merely participating in negotiations might already be sufficient to antagonize several NATO allies, failing to sign the final document would estrange the international community. At the same time, however, the German government might fear that, by agreeing to participate in negotiations, it would make itself a target of consistent pressure from the international community and civil society. Participation without the willingness to sign seems to be a lose-lose decision. Signing a negotiated treaty would alienate Germany within NATO, at least in the short term, while at the same time strengthening its bonds with Austria, Switzerland, and the emerging

69. Active Engagement, Modern Defence, paragraph 26, see footnote 48.

countries. Not signing the treaty might be greeted with relief by the then already disappointed allies, but with disillusionment by the international community. Avoiding any commitment to participate in the negotiation process would preserve the positive climate within NATO, but would disappoint the international community.

German participation in negotiations on a treaty banning nuclear weapons could stimulate the internal debate on NATO's nuclear deterrence with the consequences mentioned above, weaken German position within the alliance, and jeopardize its diplomatic efforts in the Ukraine crisis. On the other hand, participation would enable Berlin to influence the drafting of the text. Whether Germany would be interested in influencing its outcome is not certain. As mentioned earlier, for the German government »at some point in time on the way down to Zero a Nuclear Weapons Convention will be negotiated.«⁷⁰

5.3 Signing a Treaty Banning Nuclear Weapons

If Germany were to sign and subsequently ratify a treaty banning nuclear weapons, it would need to consider the legal, political, military, and economic implications of such a decision.

First of all, Berlin would have to analyze the implications for the physical deployment of the American nuclear weapons in Germany. By signing a treaty banning nuclear weapons, the government could be obliged to terminate the agreement on the stationing of the B61 bombs in Germany. This, in turn would require a relocation of the B61s from Büchel to other bases in Europe (possibly in Eastern or Southern Europe) or their redeployment to the United States. This should not pose any technical problems as the United States continually flies individual B61s back and forth between Europe and the United States for maintenance purposes. Such a decision might also require the physical destruction or removal of the WS3 underground storage vaults for nuclear weapons at Büchel, as well as at Ramstein and Memmingen, which housed the B61s in the past, in case this has not already been done. Otherwise, German air bases would remain in the so-called »caretaker-status« potentially prepared

to store the B61s at some time in the future. The release of German pilots from the 33rd Fighter Bomber Squadron from conducting the nuclear mission and participating in the annual Steadfast Noon exercise aimed at B61 delivery training, would not necessarily entail major job losses. Because the Tornado is a so-called dual-use aircraft that can also be deployed for non-nuclear missions such as reconnaissance, neither the dismissal of the pilots nor the decommissioning of the aircraft seems likely. Yet, it is unlikely that Germany could engage in the Support of Nuclear Operations with Conventional Air Tactics mission, which provides nonnuclear assistance to the nuclear mission. A ban might also require the removal of all nuclear weapons-related modifications from remote control rooms and aircraft, including the Aircraft Monitoring and Control system which enables the pilot to monitor the weapons' safety, arming, and fusing. Because the Tornado also fulfills a nonnuclear mission, the costs directly related to its nuclear assignment are not known. However, at a cost of 43.000 euro per operating hour and around 135 to 157 flight hours remaining per year per aircraft, canceling the Tornados' participation in the nuclear mission would potentially bring some savings. Despite its age, the Tornado is scheduled to remain in service beyond 2025.⁷¹ Its potential successor, the Eurofighter, will probably lack B61 certification, which in any case poses a problem for the German commitment to participate in NATO's nuclear mission. In principle, terminating nuclear sharing would also place a question mark over the needed to maintain the Büchel air base. Since participation in the alliance's nuclear mission represents the core purpose of the base, its closure seems probable. This would be a visible signal of the German withdrawal that would play well in the media. However, closing the Büchel air base would threaten the jobs of some 2000 people, including 600–800 civilian employees.⁷²

In terms of alliance arrangements, Germany's status in the Nuclear Planning Group (NPG), NATO's senior body discussing policy associated with nuclear weapons,

71. Schriftliche Fragen mit den in der Woche vom 24. September 2012 eingegangenen Antworten der Bundesregierung, Drucksache 17/10875, 28 September 2012, p.46, <http://dip21.bundestag.de/dip21/btd/17/108/1710875.pdf>.

72. Katharina Schönwitz, Die Bombe ist 'ne Jobmaschine, Stern, 25 April 2009, <http://www.stern.de/panorama/atomwaffenlager-buechel-die-bombe-ist-ne-jobmaschine-662044.html>, cf. Arne Bensiak, Nuklearwaffen werden nicht abgezogen, sondern modernisiert, der Tagesspiegel, 23 July 2014, <http://www.tagesspiegel.de/politik/us-atombomben-in-deutschland-nuklearwaffen-werden-nicht-abgezogen-sondern-modernisiert/10236788.html>.

70. Statement by Germany during the Second Conference on the Humanitarian Impact of Nuclear Weapons, see footnote 8.

would require clarification. Participation in negotiations of a treaty banning nuclear weapons would probably not imply any changes to Germany's status within the NPG. Following the withdrawal of nuclear weapons from their territories, Spain and Greece continue to participate in the NPG. Signing a treaty banning nuclear weapons could lead to termination of all planning and supporting activities in relation to nuclear weapons, including those within the NPG. However, this would not necessarily lead to a German withdrawal from NATO. As the example of France shows, states do not need to be part of the NPG in order to remain members of the alliance.

A German signature on a treaty banning nuclear weapons would, however, imply that Berlin not only rejects active participation in nuclear deterrence, but that it also opposes the use of the nuclear deterrent. Here the question arises whether this would mean opposition to deterrence in general, or only to deterrence on behalf of Germany (in response to an attack on Germany). Would and could Berlin remain a member of an alliance that, in very specific scenarios, still envisages the use of nuclear weapons, even if Berlin would opt out of such use and/or condemn such a practice? Would it be politically possible for NATO to apply different nuclear deterrence policies to different member states? As things stand, being »covered« by NATO nuclear deterrence is an automatic implication of membership. It is not written into the North Atlantic Treaty, however, but is the result of a political agreement. Whether NATO could consider extending its nuclear deterrence »coverage« to individual member states only on request depends on the political agreement among its members. Notwithstanding potential political dissatisfaction and/or opposition on the part of some members, there do not seem to be any technical or legal obstacles to NATO providing nuclear deterrence.

As regards further political implications, a government considering signing a treaty banning nuclear weapons needs to analyze potential responses by other NATO member states. It would probably come under a great deal of political pressure from the alliance, and from the United States in particular. The reaction of NATO states would depend in part on how the German government communicated its intentions and actions, and on how its allies perceived and tried to instrumentalize the latter. Because NATO allies collectively distance themselves from the »humanitarian initiative«, and from participation in negotiations of a treaty banning nuclear weapons

in particular, an opposing stance by Germany might be perceived as undermining the alliance's unity and significantly weaken Berlin's position within NATO. NATO solidarity has acquired renewed importance in the light of a Russian doctrine based explicitly on nuclear weapons which frames NATO as its enemy, and of the Kremlin's provocative activities⁷³ and rhetoric. Germany agreed to a particular consensus on nuclear weapons embodied in the 2010 Strategic Concept and the 2012 DDPR. By breaking this agreement, Berlin would lose credibility as a reliable and trustworthy ally. Of course, Germany could try to minimize the damage and compensate NATO partners by providing additional and/or relocating military systems, preferably to the newer NATO states, which may have the biggest problem with German participation in the treaty accession. It remains an open question whether this would trigger a renewed debate on NATO nuclear deterrence and give rise to changes to the alliance's position. At the same time, a German decision to break with NATO's anti-treaty posture could trigger a chain reaction with other NATO member states that deploy the B61 on their territory and provide delivery aircraft.

NATO's current strategic concept is not written in stone. Its next version could reflect changes resulting from Germany signing and subsequently ratifying a treaty banning nuclear weapons. NATO redesigns its strategic concept on a regular basis, mainly in order to better reflect changes in its security environment. But it also seems feasible to design a security strategy to reflect *internal* changes. Of course, NATO could not be expected to change its strategy in a hurry in response to German ratification of a treaty banning nuclear weapons. However, Germany could make appropriate reservations when signing and/or ratifying the treaty in order to accommodate such a delay.

As regards further consequences, a decision to participate in the negotiations would enhance Germany's credibility as a supporter of arms control. Germany's involvement in all international nuclear disarmament, non-proliferation, and security initiatives (e.g. the P5+1 diplomatic efforts with Iran on its nuclear program, NPDI, and the Nuclear Security Summit) imposes a special responsibility and increased expectations on the government. Whether

73. Ian Kearns, Łukasz Kulesa, Thomas Fraer, Russia – West Dangerous Brinkmanship Continues, 12 March 2015, European Leadership Network, http://www.europeanleadershipnetwork.org/russia—west-dangerous-brinkmanship-continues-_2529.html.

the recent merging of the Ministry of Foreign Affairs Directorate-General for Disarmament and Arms Control with the Directorate-General for the United Nations and Global Issues will increase the focus on nuclear disarmament as a multilateral endeavor⁷⁴ or instead weaken nuclear disarmament efforts⁷⁵ will become apparent in the near future.

Should the international community agree on a text of a treaty banning nuclear weapons, Germany may come under severe pressure to join the initiative or may have to continually justify its abstention. The NPT does not explicitly oblige states to codify a moral ban on nuclear weapons. Under the NPT, nuclear weapons are already illegal for Germany. Signing a treaty banning nuclear weapons would neither add anything to this legal status, nor change the disputed legal interpretation that allows NATO nuclear sharing in Europe.⁷⁶ However, given that Berlin refuses to sign the treaty, non-NATO NNWS may raise questions over the German government's sincerity in implementing the general obligation to pursue effective measures for disarmament. Even though the German government's response to such allegations would probably refer to its lack of confidence in the "effectiveness" of such a treaty, supporters of the treaty might interpret a refusal to sign as an acknowledgment that nuclear weapons can be used. Ultimately, signing a treaty banning nuclear weapons does not prevent a nuclear weapons' convention later on.

Depending on whether and to what extent a potential treaty prohibited financing of and assistance with nuclear weapons and their delivery systems, it might be necessary to revise German national legislation. The German War Weapons Control Act prohibits financing and assistance in the production of nuclear weapons, but not of their delivery systems.⁷⁷ However, as a study conducted by ICAN suggests, several German financial institutions

have investments in companies that are directly or indirectly involved in producing components used for nuclear weapons delivery systems.⁷⁸ For example, the report lists the German concern ThyssenKrupp, whose Marine Systems division is building six Dolphin AIP submarines for the Israeli navy in the Howaldtswerke-Deutsche Werft AG in Kiel. According to several sources, the submarine is able to carry nuclear-tipped cruise missiles.⁷⁹ In the wake of German accession to a nuclear weapons ban treaty, these financial institutions might have to terminate such contracts and incur contractually based financial penalties as a result.

Participation in negotiations leading to a nuclear weapons treaty or acceding to a negotiated treaty later on would not entail any domestic political costs for the German government because the majority of the German public does not perceive nuclear weapons as a strategic game-changer. At the same time, neither civil society nor parliament exerts pressure on the issue that the German government has to factor directly into its political decision-making. Such a treaty would have to be ratified by parliament. However, it does not seem likely that, once a CDU/CSU and SPD coalition government had decided to accede to a treaty, the political parties would not vote to ratify it in parliament.

6. Conclusions

The »humanitarian initiative« has reinvigorated the debate on nuclear disarmament. While most states are generally sympathetic to the initiative, they diverge over how its premises should be integrated into the existing disarmament framework in operational terms. The failure of the 2015 NPT Review Conference to adopt a consensus final document, may prove to be decisive in mobilizing and channeling discontent with the pace and progress in nuclear disarmament. As a result, some states may call for negotiations of a treaty banning nuclear weapons. In that case, Germany will face an uncomfortable choice between its resolve to be a reliable NATO ally and show-

74. Deutscher Bundestag Stenografischer Bericht 90. Sitzung, p. 8541, see footnote 11; See also Rolf Mützenich, *Das Ende der Abrüstung?*, IPG, 17.03.2015, <http://www.ipg-journal.de/schwerpunkt-des-monats/neue-high-tech-kriege/artikel/detail/das-ende-der-abruistung-842/>.


75. Harald Müller, *Bedeutungsverlust der Abrüstung*, Frankfurter Rundschau, 2.03.2015, <http://www.fr-online.de/gastbeitraege/auswaertiges-amt-bedeutungsverlust-der-abruistung,29976308,30011294.html>.

76. Butcher Martin, Butler Nicola, Meier Oliver, Nassauer Otfried, Plesch Dan, Schöfbänker Georg, Young Stephen (1997) *NATO Nuclear Sharing and the NPT – Questions to be Answered*, BASIC-BITS-CESD-ASPR Research Note 97.3, <http://www.bits.de/public/researchnote/rn97-3.htm>.

77. Ausführungsgesetz zu Artikel 26 Abs. 2 des Grundgesetzes (Gesetz über die Kontrolle von Kriegswaffen) § 17 Verbot von Atomwaffen, http://www.gesetze-im-internet.de/krwaffkontrg/_17.html.

78. *Don't Bank on the Bomb. A Global Report on the Financing of Nuclear Weapons Producers*, PAX & ICAN, October 2014, http://www.dont-bankonthebomb.com/wp-content/uploads/2014/11/2014_DBOTB_full-web.pdf.

79. *Secret Cooperation: Israel Deploys Nuclear Weapons on German-Built Submarines*, Spiegel Online International, 3 June 2012, <http://www.spiegel.de/international/world/israel-deploys-nuclear-weapons-on-german-submarines-a-836671.html>.



ing solidarity with predominantly non-NATO NNWS in advancing nuclear disarmament.

As things stand, it does not seem feasible that the German government will make substantial concessions when it comes to the »Humanitarian Pledge« to participate in negotiations or sign a treaty banning nuclear weapons. Although it is sympathetic to the idea, it rejects the call to negotiate such a treaty mainly because of its NATO alliance commitments and a certain skepticism concerning the long-term effects of such a treaty. For the present, the federal government prefers to fulfill its role as a defender of disarmament by working to mitigate the potential internal damage to the alliance's nuclear posture caused by the Ukraine crisis. Berlin has also adopted a mediating role in the search for a peaceful solution to the war in Ukraine, and for that reason it prefers to concentrate its efforts on ensuring stability in Europe and sees the »humanitarian initiative« as potentially destructive of these efforts.

Supporting the »Humanitarian Pledge« and participating in negotiations of a treaty banning nuclear weapons would mainly entail political consequences with respect to the NATO community. In contrast, signing a treaty would have far-reaching political and legal, and to a lesser extent also economic, implications. All scenarios would entail a boost in Germany's image as a consistent and steadfast supporter of nuclear disarmament.

Whether Germany would join a treaty banning nuclear weapons depends on at least three issues: first, on developments within NATO and in the European security order; second, on the number of states that join in the initiative and the pressure they could exert on the German government; and third, on the German government's conviction that the treaty would not antagonize the NNWS and undermine progress toward nuclear disarmament.

In conclusion, although none of the three scenarios developed in this paper suggests that German involvement in a treaty process would entail unacceptable legal, economic, military, or political costs, as things stand it seems unlikely that the German government will embrace the »humanitarian initiative« on nuclear weapons in the near future.



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