

*Please share your expectations for the **NPT** in the context of Article VI commitments, as well as what we want our governments to do to ensure full implementation of the Treaty - including fulfilling prior obligations.*

By Marion Küpker

Germany's Nuclear Weapons Background Information

Our umbrella network *Abolish nuclear weapons - start with us!* currently consists of more than 70 peace movement organizations which together increase pressure on the government for three goals: 1) withdrawing the approximately 20 U.S. nuclear bombs from Büchel; 2) Germany's ratification of the 2017 Treaty on the Prohibition of Nuclear Weapons making the country nuclear weapons-free; and 3) cancellation of the planned replacement of the current B61-3 and B61-4 bombs with the new B61-12 bomb just now being produced in the USA.

Even though the Cold War ended 30 years ago, about 20 U.S. nuclear bombs are still deployed at the German air force base Büchel in West Central Germany. German pilots are trained to take off with these bombs in their Tornado fighter jets when the order comes from the U.S. president, through NATO, to drop them on their targets. This horrifying vision is part of the "nuclear sharing agreement" in NATO, which includes a nuclear first-use option and regular NATO exercises (see below).

Germany's new government just decided in November 2021 in its coalition negotiations to acquire new nuclear weapons carrier aircraft from the United States, at an estimated cost of up to \$9 billion. Until 2040, when the EU's Future Combat Air System (FCAS) nuclear weapons fighter is to be developed, Boeing's F/A18, is currently favored as an interim solution. The German government wants to join forces with France and Spain to launch the new FCAS nuclear-capable multi-fighter aircraft. As a semi-autonomous weapons system networked with Eurodrones, the FCAS is expected to be operational from 2040 and would cost Germany alone about \$565 billion.

In 2016 our German umbrella network started the campaign *Büchel is everywhere! nuclear weapons free now* with annual 20-week-long protests from March to August. Civil resistance has led to more than 100 court trials where protesters have argued that international law must be recognized and obeyed by the courts, and since 2008 fourteen complaints/appeals have been rejected by Germany's Constitutional Court.

In November 2021, for the first time in our 25 years of protests in Büchel, Stefanie Augustin and I (Marion Küpker) filed a formal appeal with the European Court of Human Rights about the German court system's refusal to acknowledge the supremacy of international law.

By stationing U.S. nuclear weapons in the Federal Republic of Germany, the government is in violation of Articles 1 and 2 of the [NPT](#),¹ which it regards as international treaty law to be applied domestically under Article 59.2 of the Basic Law. And all such treaties are recognized as the supreme law of the land in Germany's Basic Law at Article 25.²

¹ Article I: "Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices." Article II: "Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices." (<http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>)

² Article VI of the Constitution of the United States: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law

In addition, the stationing of U.S. nuclear weapons in Germany violates Article 3 of the September 12, 1990 Two-Plus-Four Treaty³ (Treaty on the Final Settlement with Respect to Germany), in which Germany renounced the possession of nuclear weapons, and reaffirmed its commitment to the NPT. The Two Plus Four Treaty's Article 5, paragraph 3 explicitly forbids the placement of nuclear weapons in Germany. It says: "Following the completion of the withdrawal of the Soviet armed forces from the territory of the present German Democratic Republic and of Berlin, units of German armed forces assigned to military alliance structures in the same way as those in the rest of German territory may also be stationed in that part of Germany, but without nuclear weapon carriers. ... Foreign armed forces and nuclear weapons or their carriers will not be stationed in that part of Germany or deployed there."

Despite overwhelming public support for the removal of the U.S. nuclear weapons from Germany, including the Bundestag's cross-party resolution of 26 March 2010 calling for the government to negotiate the removal of the weapons, no progress has been made. In fact, costly plans are now underway to tear up the 2010 mandate and replace the existing U.S. B61-3 and B61-4 nuclear weapons in Germany with brand new H-bombs known as B61-12s beginning as soon as 2024.

Yet all the states parties to the NPT have violated their promise "... to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament." NATO partners of the United States have even gone so far as to boycott and ignore the negotiations and the agreements that resulted in 2017 in the adoption of the Treaty on the Prohibition of Nuclear Weapons which entered into force last year. This obstruction is an ongoing violation of the NPT's state parties' promise to "facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery."

As a member of the United Nations, Germany has adopted the Charter of the United Nations as a Treaty. Under Article 93 of the UN Charter all member states are parties to the Statute of the International Court of Justice (ICJ), which has also been adopted as a Treaty. The ICJ is the principal legal organ of the United Nations, and is the most authoritative international tribunal regarding the law among nations. Significantly, the 1996 Advisory Opinion ICJ unanimously agreed that Article VI of the NPT⁴ is binding upon all state parties to the Treaty and constitutes a mandatory treaty obligation. Regarding the NPT's Article VI mandate explicitly, the ICJ unanimously found: "There is an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."⁵

The imminent international law scholar Professor Francis A. Boyle writes, "In its Advisory Opinion of July 1996, the International Court of Justice ruled unanimously in paragraph 105(2)(C) that: 'A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful.' "It is obvious from reading the World Court's Advisory Opinion that any currently contemplated threat or use of nuclear weapons by the United States government is illegal under international humanitarian law, and therefore I would add, criminal."⁶

of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Article 35 of the German Basic Law states: "The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory."

³ Unification Treaty (August 31, 1990), (https://ghdi.ghi-dc.org/docpage.cfm?docpage_id=546)

⁴ NPT Article VI: "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."

⁵ United Nations International Court of Justice, Advisory Opinion, 8 July 1996, § 105 (2) F

⁶ Prof. Francis A. Boyle, Ph.D., *The Criminality of Nuclear Deterrence* (Clarity Press 2002), pp. 193 & 202.

The late Judge Weeramantry of the International Court of Justice wrote in his dissenting opinion to the ICJ's Advisory Opinion of 8 July 1996, "Weapons of war which can kill a million or a billion human beings (according to the estimates placed before the Court ... stand in flagrant contradiction of the basic values underlying the United Nations Charter, international law, and international humanitarian law. ... [It is] demonstrably impossible for the weapons to comply with the basic postulates laid down by the Court, thus rendering them illegal in terms of the unanimous finding of the Court."⁷

Yet in spite of these irrefutable treaty prohibitions and scholarly warnings, regular planning for and rehearsals of attacks with the nuclear weapons in Germany at Büchel are conducted by German Tornado jet fighters of the 33rd Fighter-Bomber Wing, as is often reported. For example, NATO announced on October 18, 2021, the start of its nuclear attack practice named "Steadfast Noon." German Tornados participated as usual. According to NATO's statement, "Steadfast Noon involves training flights with dual-capable fighter jets," meaning jets that carry nuclear weapons. "This exercise helps to ensure that NATO's nuclear deterrent remains safe, secure and effective."⁸ (Emphasis added.) Likewise, news reports from October 2020 declared: "NATO Holds Secret Nuclear War Exercises in Germany;" "German Air Force training for nuclear war as part of NATO;" and "NATO Holds Secret Nuclear War Exercises in Germany." In 2015: "NATO nuclear weapons exercise Steadfast Noon in Büchel."⁹

U.S. and German militaries also prepare for attacks using their nuclear weapons with educational courses at the Defense Nuclear Weapons School of the U.S. Air Force Nuclear College. This school operates branches in many states and one for German Tornado jet fighter/bomber crews is at Ramstein Air Force Base in Germany.¹⁰ According to its website, this school "is responsible for delivering, sustaining and supporting air-delivered nuclear weapon systems for our warfighters ... every day." But the hydrogen bombs at Büchel can only produce uncontrollable, indiscriminate and unnecessary mass destruction by heat, blast and radiation.

In order to end its multiple violations of the NPT, and reverse its flagrant dismissal of the International Court of Justice's 1996 Advisory Opinion regarding nuclear weapons, Germany must see that all nuclear weapons are permanently withdrawn from the country, and Germany must demand cancellation of the planned replacement of the current B61 bombs with the new B61-12.

More information in German is at www.atomwaffenfrei.de; and at www.buechel-atombombenfrei.de

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— December 23, 2021

⁷ ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, Dissenting Opinion of Judge Weeramantry, pp. 1-2.

⁸ Hans Kristensen, "NATO Nuclear Weapons Exercise Over Southern Europe," <https://fas.org/blogs/security/2021/10/steadfastnoon2021/>; Oct. 20, 2021

⁹ "NATO Holds Secret Nuclear War Exercises in Germany, Ignores Turkey," Oct. 15, 2020, <https://see.news/nato-secret-nuclear-war-exercises-germany-ignores-turkey/>; "Stop 'Steadfast Noon' Nuclear War Exercise Now!" Oct. 14, 2020; 2019 "Secret nuclear weapons exercise 'Steadfast Noon'," <https://www.bundeswehr-journal.de/2019/geheime-atomwaffenuebung-steadfast-noon/>; 2017, "NATO nuclear weapons exercise unusually open," <https://www.bundeswehr-journal.de/2019/geheime-atomwaffenuebung-steadfast-noon/>; 2015, "NATO nuclear weapons exercise Steadfast Noon in Büchel", <https://augengeradeaus.net/tag/steadfast-noon/>

¹⁰ See U.S. Air Force Nuclear College: <https://cs3.eis.af.mil/sites/OO-AQ-MC-95/default.aspx>