

A. Introduction

1. The civil society organizations making this submission contend that the policies and actions of the German government, through its nuclear deterrence policy and nuclear sharing, violate international human rights law, particularly the right to life as interpreted by the UN Human Rights Committee in General Comment 36 of October 30, 2018, and other human rights.

B. Facts

Nuclear deterrence and nuclear sharing in Germany

2. The first chancellor of the Federal Republic of Germany, Konrad Adenauer, called for arming the Bundeswehr with nuclear weapons in 1956,ⁱ but ultimately failed in the Bundestag due to the “Göttinger Appeal,” written by 18 recognized scientists, and due to the resistance of the German population. Since that time all German administrations have followed the strategy of nuclear deterrence as an essential component of their security and alliance policy. The concept of nuclear deterrence policy has ultimately never been called into question. It is part of NATO's policy, which integrates German armed forces in its strategic nuclear planning. Accordingly, Germany participates in all consultations and decision-making processes of the Nuclear Planning Group of the North Atlantic Treaty Organization (NATO) concerning plans and preparations for the use of nuclear weapons, including possible first use.

3. So far, all federal administrations have expressly approved the stationing of U.S. nuclear weapons in Germany and their use by Bundeswehr soldiers and German military aircrafts. The Bundeswehr has stationed 44 Tornados of Jagdfliegergeschwader 33 at the Air Base Büchel (Eifel).ⁱⁱ There, German pilots are trained in the use of nuclear weapons so that they can also take over the use of these nuclear weapons if ordered to do so. They demonstrate their operational readiness together with the pilots from other nuclear sharing states (Belgium, Italy, the Netherlands and Turkey) in annual NATO maneuvers.

4. The about 20 B61 nuclear bombs stored by U.S. forces in Büchel and held ready for use are to be replaced in the coming years by a modernized B61-12 version. The Bundeswehr is to be equipped with F35 stealth bombers for their use and has therefore begun expanding the base, according to press reports, at an estimated cost of about 1 billion EURO, according to a recent announcement.ⁱⁱⁱ

5. Although the nuclear powers and their allies have agreed to international treaties limiting nuclear weapons, they have not yet shown any willingness to negotiate with the aim of achieving complete nuclear disarmament under strict and effective international control. The German government has also failed to demonstrate a serious commitment to complete nuclear disarmament. In addition, the German government did not participate in the negotiations on the Treaty on the Prohibition of Nuclear Weapons (TPNW). Like the nuclear powers and their allies, the German government refuses to join the treaty, which has been in force since January 22, 2021 and prohibits the development, production, testing, stockpiling, transport, deployment and use of nuclear weapons.

C. International Law Assessment

Nuclear deterrence and nuclear sharing violate International Law

6. Notwithstanding the violations of international humanitarian law and the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)^{iv}, the German government violates the human right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) through its policy of nuclear deterrence and nuclear sharing.

7. The maintenance of the nuclear deterrence policy and the operational deployment of nuclear weapons show the willingness to use these weapons. The coordinated practice of nuclear bomb drops in the annual NATO maneuvers "Steadfast Noon" is indication of the readiness to use these weapons in case of conflict. It is made concrete by corresponding statements of the responsible politicians as in the statement of the German Minister of Defense at the time, Annegret Kamp-Karrenbauer. She stated that Germany must be prepared to use its deployed nuclear weapons against Russia in the tense international conflict situation.^v It is hard to argue that this policy, which contains constant readiness and training of the use of nuclear weapons is in accordance with the NPT. Although there are persuasive arguments to describe this policy as a violation of the NPT, it can by no means be considered as in compliance with it. Even if Germany has no direct control over the nuclear weapons stationed in Germany, the training, the readiness and the overall nuclear sharing policy are a preparation to directly violate the NPT. So, Germany (and all nuclear sharing states) are at least not interpreting and performing the NPT in good faith according to its object and purpose, as required by Article 31 of the Vienna Convention on the Law of Treaties, 1969.

8. The use of nuclear weapons would arbitrarily deprive countless people of their lives, damage their health and make vast areas of land uninhabitable. Through its policy of nuclear deterrence, the German government ultimately takes all of humanity hostage for its security interests and threatens the entire world to destroy the lives of countless people and permanently destroy its environment in the event of war.

UN Human Rights Committee bans nuclear weapons

9. The UN Human Rights Committee stated in its General Comment 36 on Article 6 of the ICCPR (para. 65), published in October 2018, that States Parties engaged in the deployment, use, sale or purchase of existing weapons and in the study, development, acquisition or adoption of weapons, and means or methods of warfare, must always consider their impact on the right to life. Moreover, in para. 66 it specifically stated "[t]he threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale is incompatible with respect for the right to life and may amount to a crime under international law."^{vi}

No grounds of justification

10. There is no justification under any circumstance for the threat of use or for the use of nuclear weapons; in particular, there is no thinkable case of self-defense with these weapons permissible under international law.

11. The Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Conflicts (Protocol I) of June 8, 1977^{vii} states unequivocally in Article 35: "In any armed conflict, the right of the Parties to the conflict to

choose methods or means of warfare is not unlimited." States may therefore defend themselves only with weapons not prohibited by international humanitarian law. The use of nuclear weapons and the threat thereof violate international humanitarian law, according to the advisory opinion of the International Court of Justice (ICJ),^{viii} because they have an indiscriminate effect, cause superfluous injury or unnecessary suffering as well as widespread, long-term and severe damage to the natural environment (which are considered cardinal principles of IHL) and they violate the principle of neutrality.^{ix}

12. The prohibition of use and threat of use under international law binds not only the states parties to the treaty, but all states of the world under customary law,^x as the principles described above are "intransgressible principles of international customary law."^{xi} It applies to all cases of self-defense invoked by nuclear-weapon states and their allies, including in the case claimed by them of "an extreme self-defense situation in which the very survival of a state would be at stake," which the ICJ was unable to decide.

13. However, the ICJ was able to determine that the use of nuclear weapons is "scarcely reconcilable" with international humanitarian law.^{xii} Moreover, it made clear that even in the case of an extreme self-defense situation in which the survival of a state is at stake, any use of nuclear weapons could at most be in accordance with international law if it complies with the principles and rules of international humanitarian law. The ICJ has stated that the right of self-defense under Article 51 of the UN Charter is limited by international humanitarian law whatever means of force are employed.^{xiii} A different rule for extreme self-defense situations in which the survival of a state is at stake is not to be found in international law and has not been set forth by the ICJ. As Marco Sassoli explained, "[i]f it would be lawful for that reason, that would mean the end of [international humanitarian law] as we know it. In nearly all international armed conflicts, at least one side believes itself to be fighting in self-defence. In most armed conflicts, at least one side's very survival is at stake. If such a situation could justify the (otherwise prohibited) use of nuclear weapons, it could perforce also justify the killing of wounded or sick or the torture of prisoners of war"^{xiv} or civilians.

14. ICJ President M. Bedjaoui, in his statement appended to the opinion, stated: "I cannot sufficiently emphasize that the Court's inability to go beyond this statement of the situation can in no way be interpreted to mean that it is leaving the door ajar to recognition of the legality of the threat or use of nuclear weapons."^{xv}

Contradictory messages of Germany

15. Despite law, the German government's behavior often contradicts itself. It seems Germany is uncertain in the legal assessment of its nuclear weapons strategy and the government ought to have further internal discussions. On the one hand, in 2006 and 2008, Germany explicitly forbade soldiers to use nuclear weapons in armed conflicts in their manuals.^{xvi} On the other hand, NATO's nuclear deterrence policy, which implies possible nuclear use, has never been questioned by the federal government. Germany is in opposition to the Treaty on the Prohibition of Nuclear Weapons (TPNW), despite it has chosen to assume observer status at the TPNW Review Conferences.

16. The population, which has spoken out against Germany's nuclear deterrent and nuclear sharing in numerous polls, opposes the status quo. Its opposition prompted the Bundestag to pass a decision on 26 March 2010. The message was strong and passed by a large majority of all parliamentary groups: "Germany must send clear signals for a world free of nuclear weapons." In doing so, the Bundestag called on the German government, among other things,

to "also strongly advocate the withdrawal of U.S. nuclear weapons from Germany in the development of a new NATO strategic concept within the alliance as well as vis-à-vis U.S. allies."^{xvii} However, neither the government in office at the time nor subsequent governments have complied with this request.

No justification by state of emergency

17. It is true that Article 4(1) of the ICCPR entitles a state, in the event of a public emergency threatening the life of the nation, to take measures that abrogate its obligations under the ICCPR to the extent strictly required by the situation. Such an emergency, however, does not entitle the state to override customary international humanitarian law, which prohibits the use of nuclear weapons and the threat thereof in all circumstances.

Rights of children

18. The policy of nuclear deterrence, which contemplates the use of nuclear weapons and the threat thereof, also violates Article 6 of the Convention on the Rights of the Child of 20 November 1989, according to which States Parties recognize the inherent right to life of every child and their obligation to ensure the survival of the child.

Rights of health

19. The policy of nuclear deterrence is a violation of Article 12 of the International Covenant on Economic, Social and Cultural Rights of 19 December 1966, by which the States Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The mining of uranium, its processing, and the construction and use of nuclear weapons endanger the health and lives of countless people through the unavoidable nuclear radiation.

Contempt of obligation of nuclear disarmament

20. The maintenance of the policy of nuclear deterrence and the continuation of nuclear sharing in Germany and other NATO states violates the obligation under Article 6 of the NPT to conduct negotiations in good faith, and bring them to a successful conclusion, to achieve complete nuclear disarmament. In this regard, the ICJ stated unequivocally in its advisory opinion of 8 July 1996, that Article 6 of the NPT recognizes the obligation to negotiate nuclear disarmament in good faith. Furthermore, in its pronouncement it set a twofold obligation on all States "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."^{xviii} This, it said, was linked to the obligation to reach a precise outcome - nuclear disarmament in all its aspects by relying on a large number of UN General Assembly resolutions on the subject that have been repeatedly adopted unanimously.^{xix}

D. Recommendations

21. We recommend that Germany ends nuclear sharing, including participation in NATO's Nuclear Planning Group, unless it limits itself to nuclear disarmament.

22. Germany should refrain from modernizing Air Base Büchel, which is designated for nuclear sharing, and from acquiring new carrier aircraft, withdraw its consent to the deployment of modernized nuclear-capable B61 aerial bombs, and demand that the U.S.

government irrevocably withdraw nuclear weapons stationed in Germany.

23. Germany should abandon its opposition to the Treaty on the Prohibition of Nuclear Weapons (TPNW) and join it.

24. Germany should become more involved in the UN and other international bodies to ensure that, in accordance with its obligation under international law under Article 6 of the NPT, bona fide negotiations on complete nuclear disarmament are conducted under strict and effective international control and that they are brought to a successful conclusion.

ⁱ Matthias Küntzel, *Bonn und die Bombe - Deutsche Atomwaffenpolitik von Adenauer bis Brandt*, Frankfurt/Main, New York 1992, p. 24.

ⁱⁱ In response to a parliamentary question, the German government informed the Bundestag on Sept. 12, 2019, that construction measures at Büchel Air Base are imminent and that Nörvenich is an alternate airfield for Jagdfliegergeschwader 33 in the event that the home airfield cannot be used - Deutscher Bundestag Drucksache 19/13177.

ⁱⁱⁱ Rhein-Zeitung Cochem-Zell district 23 March 2023.

^{iv} Bernd Hahnfeld, Nuclear Sharing, IALANA 2022 - www.ialana.de.

^v Interview in the public network Deutschlandfunk on 21 October 2021, <https://www.deutschlandfunk.de/nato-strategie-kramp-karrenbauer-cdu-russland-ist-eine-100.html>

^{vi} Human Rights Committee, General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life - 30 October 2018 - CCPR/C/GC/36.

^{vii} <https://ihl-databases.icrc.org/assets/treaties/470-AP-I-EN.pdf>.

^{viii} ICJ Legal Advisory Opinion of 8 July 1996 - German and English in IALANA "Atomwaffen vor dem Internationalen Gerichtshof", Münster 1997.

^{ix} ICJ, *ibid.* para. 78.

^x ICJ, *ibid.* para. 78A.

^{xi} ICJ, *ibid.* para. 79.

^{xii} ICJ *ibid.* para. 95.

^{xiii} Para. 40, 41, 42, 78 of ICJ Advisory Opinion. Para. 42: "The proportionality principle may thus not in itself exclude the use of nuclear weapons in self-defence in all circumstances. But at the same time, a use of force that is proportionate under the law of self-defence, must, in order to be lawful, also meet the requirements of the law applicable in armed conflict which comprise in particular the principles and rules of humanitarian law."

^{xiv} Marco Sassoli, *Ius ad Bellum and Ius in Bello – The Separation between the Legality of the Use of Force and Humanitarian Rules to Be Respected in Warfare: Crucial or Outdated?* in Yoram Dinstein, Jelena Pejic and Michael N Schmitt (eds), *International law and armed conflict: Exploring the faultlines; essays in honour of Yoram Dinstein*. Nijhoff eBook titles 2007, Martinus Nijhoff Publishers, 2007, p. 250–51.

^{xv} IALANA "Atomwaffen vor dem Internationalen Gerichtshof", Münster 1997 p. 115.

^{xvi} Bundesministerium der Verteidigung R II 3 - Druckschrift Einsatz Nr. 03 - DSK SF009320187.

^{xvii} Deutscher Bundestag – Plenarprotokoll 17/35, Drucksache 17/1159.

^{xviii} ICJ, *dispositive*, 2F. See also Amela Skiljan, "Are Nuclear Weapons Illegal?", *Die Friedens -Warte*, Vol. 94, Issue 3–4, 2021, p. 422-423, note 30.

^{xix} ICJ Advisory Opinion, para. 99 ff.