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## **Nuclear Disarmament, Nuclear Non-proliferation Treaty and Nuclear Sharing**

### **Should Germany end U.S. 'nuclear outsourcing'?**

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Fifty years after the arrival of the first nuclear weapons on German soil a - perhaps decisive - debate on their future has begun. Public demands to withdraw the remaining nuclear weapons from Germany are becoming more numerous.<sup>1</sup> Furthermore, relevant decision-makers have recently joined the chorus being either in favour of a withdrawal or at least regarding such a demand worthy of consideration. On May 2<sup>nd</sup> Foreign Minister Joschka Fischer referred to this demand as a "reasonable initiative", which the government will "seriously" take into consideration.<sup>2</sup> Defence Minister Peter Struck announced on May 6<sup>th</sup> "that we will mention this issue in the relevant NATO bodies", and stated: "Together with those other allies, on whose territory nuclear weapons are deployed, we will deliberate this". Furthermore, one can assume that Kurt Beck (SPD), Prime Minister of the State of Rhineland-Palatinate, which is the sole remaining federal state still housing nuclear weapons, has conferred with Struck before their recent visit of the U.S. Air Force Headquarters at Ramstein, where he added: "I completely share the view of the Federal Government that the we no longer have a threat situation which justifies in any way maintaining this storage permanently.

And therefore I support the endeavour to achieve a withdrawal of these weapons in concert with NATO".<sup>3</sup>

Presently, the Federal Government plans to arrange for consultations with Belgium, Italy and the Netherlands, since these countries - like Germany - stockpile American nuclear weapons on their territory as part of their nuclear sharing agreements in NATO. In a second step it is planned to approach the U.S. and NATO on this issue. A meeting of the Nuclear Planning Group (NPG), scheduled for June 9<sup>th</sup> and 10<sup>th</sup> in Brussels, would offer an opportunity for this. It will be the first meeting of this NATO body after an 18 month long break.

The course of action proposed by the Federal Government is to look for ways to end the deployment of nuclear weapons in Europe in concert with those European NATO states being in a similar situation. It points in the right direction. Since most security policy experts agree that these weapons have no real military value nowadays and are presumably kept mainly for symbolic reasons, it is time to talk about their withdrawal.

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It is to be welcomed that the Federal Republic, being of particular importance as Europe's largest deployment site, has pushed this debate and wants to strive for a consensus on the withdrawal.

Nevertheless, the Federal Government and German Parliament (Bundestag) should also take a second step which could help to underline the seriousness of their intentions and avoid a crucial disadvantage of the charted course of action: Sticking to the original plan would mean, that the German decision to give up nuclear weapons and the associated capabilities to employ them on-board German aircrafts inside the framework of NATO would come too late to influence the ongoing and extremely difficult negotiations on the future of the Nuclear Non-proliferation Treaty (NPT) in a positive fashion. These will end on May 27<sup>th</sup> - two weeks before a possible decision by NATO. Therefore, Germany is about to miss an opportunity to substantially strengthen nuclear non-proliferation and nuclear disarmament.

In his statement at the opening of the Review Conference on the Nuclear Non-Proliferation Treaty on May 2<sup>nd</sup> Germany's Foreign Minister Joschka Fischer remarked in an explicit fashion: "We should re-examine the existing arsenals of strategic and sub-strategic (formerly 'tactical' - ON) nuclear weapons and energetically work to further reduce them. (...) What we need now is a new impetus for nuclear disarmament." And further onward: "It is our objective to reduce and eliminate these weapons on all sides".<sup>4</sup> Fischer made clear, that the Federal Government hopes that the Review Conference could achieve a 'balanced' outcome in regard to the two main goals of the NPT, non-proliferation and disarmament.

This policy paper presents and explains a proposal, by which the Federal Government can independently contribute to a successful conclusion of the NPT Review Conference this month.

## The Proposal

The Federal Government of Germany should

1. declare Germany's willingness to abandon existing technical capabilities of the German Air Force to use U.S. nuclear weapons during NATO operations in times of war;
2. initiate consultations with other European member states of NATO, which possess similar capabilities, on their readiness and willingness to follow suit;
3. initiate consultations with these European NATO member states in order to achieve a common position to work together in NATO for a withdrawal of all U.S. nuclear weapons from European soil;
4. introduce such an initiative in pursuit of a positive decision in time for the session of the NATO defence ministers on June 9<sup>th</sup> and 10<sup>th</sup>, when they meet as the Nuclear Planning Group;
5. inform the participants of the NPT Review Conference in New York as soon as possible on the measures taken by Germany.

The Bundestag should add a corresponding resolution as a supplement to the present resolution on support for the NPT Review Conference.

Thereby, Germany would leave the technical dimension of NATO's nuclear sharing arrangement. It declares its readiness to abandon the capability of German aircrafts and pilots to use U.S. nuclear weapons in times of war once the U.S. President authorised their use. Practically, this would mean, that Germany

- will no longer provide aircraft and pilots for future nuclear missions of NATO,
- will phase out its nuclear-capable aircraft,
- halts all training measures for these purposes,

- cancels the respective agreements that constitute the legal basis for the technical dimension of nuclear sharing.

For many years now, a majority of the NPT member states have regarded NATO's practice of nuclear sharing as a violation of the spirit, if not even the letter of the NPT. This view was again voiced repeatedly and explicitly at the present Review Conference.<sup>5</sup>

The above mentioned proposal corresponds with the mid- and long-term plans of the German Armed Forces (Bundeswehr). The Bundeswehr wants to convert its two remaining Tornado units, which can contribute to nuclear sharing capacities. On January 29<sup>th</sup>, 2001, the "Order of the Day", issued by the Air Force Chief of Staff outlining plans to adopt the "Air Force Structure 5", stated, that the 31. and 33. Fighter-Bomber Wings "will be equipped with the multi-role capable EF 2000 between 2007-2010 and 2012-2015". The multi-role Eurofighter is not designed as a nuclear-capable aircraft. Parliamentary Secretary of State of the Ministry of Defence, Walter Kolbow, reassured the Bundestag in July 2004: "It is not planned and no steps are undertaken to make the Eurofighter weapon system capable for a mission with nuclear weapons."<sup>6</sup> Therefore: In about ten years time the German contribution to the technical dimension of nuclear sharing is scheduled to be phased out anyway. This raises the question, why this can't happen now - or asking the other way around: which reasons justify maintaining this expensive capability for another ten years?

The proposal would not prevent other, more far-reaching but also more complex and time-consuming attempts to reach an agreement with the U.S. on a complete withdrawal of all nuclear weapons from Germany and Europe.<sup>7</sup> Instead, it could serve as a first step on the way towards achieving these longer term goals. The proposal falls inside Germany's national decision-making authority and therefore doesn't require advance approval of third parties.<sup>8</sup> It can be realised without infringing on the domain of other NATO states, especially

those of the nuclear power USA.<sup>9</sup>

Numerous reasons and arguments can be listed in favour of implementing this proposal during the NPT Review Conference. This measure

1. is the only step by which Germany, as a non-nuclear state, can actively contribute to disarmament of existing military nuclear capabilities and the respective delivery systems;
2. can facilitate long overdue discussions on the inclusion of tactical or sub-strategic weapons, into the arms control debate - or respectively actively encourage to push for such a discussion - especially with respect to Russia;
3. is a clear signal that Germany considers nuclear weapons to have a lesser role for security policy in the future;
4. constitutes a confidence-building measure;
5. strengthens the Nuclear Non-proliferation Treaty, because by Germany terminating nuclear sharing, a practice is ended which the majority of the state parties to the NPT regards as a violation of the spirit, if not the letter of the treaty; and
6. explicitly demonstrates that Germany is committed to pursue a restrictive interpretation and strict adherence to the NPT without any compromises.

In addition, regarding the other non-nuclear NATO member states which are at present also parties to the nuclear sharing mechanism, Germany takes a leading and constructive role, encouraging the other states. to follow suit in an analogue fashion.

The legions of arguments which have been fielded throughout Germany's 50 years of history in favour of maintaining the technical dimension of nuclear sharing, have either become outdated or are now only of comparatively marginal relevance. Since a long time, providing nuclear capable delivery systems is no longer a prerequisite for full membership and a full say of non-nuclear

states in the Nuclear Planning Group, where the members of the Alliance discuss potential courses of action. Canada and Greece, two non-nuclear states, which previously have operated nuclear capable delivery systems, are still fully involved in the NPG. Furthermore, all new NATO member states do have unconditional access to and a full say in the NPG even though they are not contributing any nuclear delivery systems. Before their accession to NATO, they were assured that they would not become second-class members because of not owning such systems. The argument "We have to go along in order to have a say" is not valid anymore. Otherwise the assurances given to the new NATO states would be worthless and they would be de facto second-class members. However, this step would not mean a complete de-nuclearisation of NATO's strategy. In case of an emergency, British and U.S. nuclear submarines could be still assigned to the Alliance. Finally, even the argument, that only the deployment of nuclear weapons in Europe and the availability of European delivery systems signals the willingness of European NATO states to carry their fair share of nuclear risks, roles and responsibilities has lost weight. This is revealed by various facts, e.g. the fact, that the Nuclear Planning Group only meets annually or that it now takes months instead of weeks or even minutes, as was the case in earlier times, to achieve full scale nuclear readiness for delivery systems.<sup>10</sup> Today, there simply is no military requirement for maintaining the technical dimension of nuclear sharing and there is no justification for the additional expenditures associated with this practice.<sup>11</sup> Therefore the vast majority of the arguments supports the conclusion that Germany can end its participation in the technical dimension of nuclear sharing and publicly announce this step in order to strengthen the NPT as a German contribution to disarmament and non-proliferation.<sup>12</sup> The current Review Conference offers the opportunity for this.

## Appendix: Background Information

### 1. Nuclear Sharing

The concept of nuclear sharing was developed during the fifties, when Germany's armed forces, the Bundeswehr, were being set up and NATO was gradually shifting towards its strategy of massive retaliation (MC 14/2). In March 1957 NATO's Supreme Commander, General Norstadt, confirmed for the first time that the U.S. was storing nuclear weapons in Germany. A couple of days later he went one step further by stating, that in the event of war the USA were willing to hand over nuclear weapons to the allies, for example Germany, for use by their delivery systems. Shortly afterwards Chancellor Konrad Adenauer publicly voiced interest in equipping the Bundeswehr with nuclear capable delivery systems.<sup>13</sup> Leading up to these statements, bilateral talks had been held between the U.S. and Germany since autumn of 1956. They resulted in an agreement in principle that Germany would purchase nuclear delivery systems while the U.S. would later provide the required nuclear ammunition. This arrangement was codified legally through bilateral agreements and technically put into practice. After 1963 - U.S. President John F. Kennedy, being a great deal more concerned about the safety of nuclear weapons than his predecessors and wanting to minimise the risk of an accidental nuclear war - the USA began to equip their nuclear weapons with new safety systems, Permissive Action Links. They were supposed to guarantee, that nuclear weapons could only be used if authorised by the U.S. President.

The negotiations on the NPT were a delicate issue for all NATO states. The treaty would - that became quickly obvious - divide NATO members into two categories: those, who could own nuclear weapons legally and those who would join the treaty as non-nuclear states. This put the established system of nuclear sharing in jeopardy. The non-nuclear NATO states wanted to safeguard their future involvement in NATO nuclear strategy and planning. They had already been pushing for quite some time

for a greater say and formalisation of the Athens Guidelines of 1962. These contained provisions for the possibility of prior consultations among NATO's members on the possible future use of nuclear weapons if time and circumstances would permit. Furthermore, the U.S. had adopted its new strategy of "flexible response" during the same year and was pushing for a matching readjustment of NATO strategy.

The difficult task of bringing the NPT and the established NATO practice of nuclear sharing, or rather 'nuclear outsourcing', under one umbrella, was solved by the NATO states only after several failed attempts, such as the Multilateral Fleet (MLF), and only by a highly dubious trick.

The result was on the one hand a modified concept of political nuclear sharing which didn't collide with the NPT: The creation of the Nuclear Planning Group in 1966 introduced the political dimension of nuclear sharing and created a body for consultations on issues such as Alliance nuclear strategy, stockpile size, deployment of nuclear weapons and delivery systems and contingency and operations planning as well as for nuclear arms control. At first, there were only four permanent members (USA, Great Britain, Italy and Germany) and four rotating non-permanent members.<sup>14</sup> Since 1979 participation in the Nuclear Planning Group is open to all NATO members, independent of the level of their involvement in implementing NATO's nuclear strategy. This also holds true for all new members which joined NATO after the end of the Cold War.

However, in the run-up to the signing of the Nuclear Non-Proliferation Treaty a second, very tricky step was taken: Most signatories were kept in the dark about the fact, that the NATO states were declaring their present practice of the technical dimension of nuclear sharing to be legal in the future. Nuclear delivery systems of non-nuclear states were permitted to be employed in the event of a war to deliver U.S. nuclear weapons. According to NATO's understanding the new treaty would not apply in times of war.<sup>15</sup>

Contrary to this, Article I and II of the freshly negotiated treaty read

#### "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."<sup>16</sup>

Until today, five of the non-nuclear NATO states possess delivery systems which are available for nuclear missions in case of war. These are specially equipped fighter-bomber-aircraft, so-called "dual capable aircraft" (DCA), which can be armed with conventional and nuclear weapons. Their crew is taught and trained in peace time to prepare and carry out nuclear missions. Nuclear weapons will be provided by the U.S. and are stored at the airfields of the European allies. During times of peace they remain exclusively under the control and supervision of the U.S. Air Force and would only be handed over to the armed forces of the non-nuclear allies in times of war.<sup>17</sup>

Presently, air force units from Belgium, Germany, Netherlands, Italy and perhaps Turkey are technically capable of being armed with U.S. nuclear weapons. In former

times Canada, Greece and France have been involved in earlier years. Some other non-nuclear NATO states like Denmark, Norway and Spain have opted to only participate in the political dimension of nuclear sharing. This also holds true for all new member states of NATO.

## 2. NPT and the Legality of Nuclear Sharing

The majority of the NPT signatories regards the concept of nuclear sharing as a violation of the treaty. Since 1998 the more than hundred states of non-aligned movement (NAM) repeatedly have called on NATO states to give up this policy. In a working paper from 1998 they proposed, that the contracting state parties should reaffirm their commitments to implement Article I and II of the treaty to the fullest:

"Nuclear-weapon states parties to the NPT reaffirm their commitment to the fullest implementation of this Article and to refrain from, among themselves, with non-nuclear-weapon states, and with states not party to the Treaty, nuclear sharing for military purposes under any kind of security arrangements."<sup>18</sup>

Despite this, NATO still believes its practice to be in compliance with the treaty. U.S.-Secretary of State Albright argued in 1997, that nuclear sharing and nuclear consultations in NATO do not violate the rules of the NPT in any way.

"This question of NPT Article I and its impact on NATO nuclear forces was debated at length during the negotiation of the NPT. All concerned accepted that the final language of Article I would not preclude the type of nuclear planning, basing, and consultative arrangements that have taken place in NATO since NPT entry-into-force in 1970."<sup>19</sup>

This position, stating that the practice of nuclear sharing is in full compliance with the NPT and that this was accepted by all state parties during the negotiations leading to the NPT, raises serious doubts. However most members of the NPT have probably signed

the treaty without knowing exactly what NATO meant by nuclear sharing, or at least without knowing, how NATO interpreted the relation between the NPT and NATO's concept of nuclear sharing.

During the treaty negotiations Washington dug deep into its machiavellian toolbox to bring nuclear sharing and NPT into a seeming compliance and possibly even negotiated under false pretences.<sup>20</sup>

The thesis of NPT and nuclear sharing being in compliance rests on the unilateral interpretation of Article I and II by the U.S., disseminated in a document titled *"Questions on the Draft Non-Proliferation Treaty asked by US Allies together with Answers given by the United States"*. Attached to the ratification documents for the NPT this document was handed over to the U.S. Senate as a letter to the European allies from the then U.S. Secretary of State, Dean Rusk. It explained, why the United States regarded the existing design of nuclear sharing not as a violation of the treaty. It is frequently referred to as the Rusk-Letter.

Starting point of its reasoning is the assumption that everything not explicitly forbidden by the NPT is allowed. It goes on to declare the various elements of nuclear sharing as being permitted: The procedures on consultations and participation in the framework of the Nuclear Planning Group, the deployment of U.S. weapons on the territories of non-nuclear states in Europe and the arming of non-nuclear states with delivery systems for nuclear weapons which belong to the U.S. At its core the line of argument always stays the same: Since only the U.S. President can authorise their use, control over them remains with the U.S. in peace times and thereby guarantees observance of the NPT. Thus, no phrase of the treaty would explicitly prohibit any element of nuclear sharing.

However, the Rusk-Letter's most delicate problem concerns the following question: How should the use of U.S. nuclear weapons by delivery systems of non-nuclear states, for instance by a German aircraft with a German crew, during war times be

treated. Here, the control over a nuclear weapon is being transferred to citizens of a non-nuclear state. The Rusk-Letter provides a perplexing answer: In times of war the treaty does not apply anymore. The reasoning behind this U.S. conclusion is even more surprising: In case a war has broken out, the treaty could not fulfil its purpose anymore to prevent the proliferation of nuclear weapons and to prevent a war being fought with these weapons. Therefore the treaty ceases to be binding.

Indeed: the preamble of the NPT stated according to U.S. wishes that it is the purpose of the NPT "to prevent such ( a nuclear) war". The U.S. interpretations deduce from this their position that the NPT does not apply in times of war.

During the negotiations the legal advisor to the State Department, Leonard Meeker, already counselled against utilising such tricky interpretations and procedural fine print:

"Should we decide to leave the wartime exception implicit we would want to make perfectly clear at Geneva what we were doing, lest we later be accused of having negotiated a treaty under false pretenses."<sup>21</sup>

But exactly this happened. Meeker's warning was blown in the wind and the number of people aware of which interpretation the NATO states were actually intending to apply was kept to a minimum in a similar cunning fashion.

The letter with U.S. answers to the questions of European allies was not – as would have been usual practice – transformed into a national reservation which would be deposited openly upon signature and thereby accessible for all parties to the treaty. Instead, it was added only on July 9<sup>th</sup> 1968, eight days after more than fifty states had already signed the treaty, to the documents sent to the U.S. Senate for discussions on the national ratification of the NPT. According to the interpretations of the U.S. Administration, this procedure sufficiently ensured, that the rest of the world was made aware of its content.

That a situation, in which the vast majority of parties would sign the treaty in ignorance of the U.S. interpretation, was no accident but actually desired, reveals a letter of the then Undersecretary of Defence, Nicholas Katzenbach, from April 10<sup>th</sup>, 1968:

"We do not believe it would be in our interest or that of our allies to have a public discussion of the US interpretations prior to the time when the NPT is submitted to the Senate for advice and consent."<sup>22</sup>

From this followed logically, that almost no party to the NPT outside of NATO really knew in detail under which most relevant interpretations NATO states signed the NPT. True, most of the NATO states deposited some kind of reservations along with their signature, which did refer indirectly to the interpretation offered by the Rusk-Letter, but none repeated the content or substance of the Rusk-letter.

Only at the third NPT Review Conference in 1985, due to a Swedish initiative, a wording countering the NATO interpretation was adopted in the final document. Since then, the treaty is valid "under all circumstances" – including times of war.<sup>23</sup>

### 3. Nuclear weapons in Germany

At present, normally around 150 nuclear weapons are deployed at two locations in Germany: At Büchel in the Eifel mountains and Ramstein in the province of Palatinat.<sup>24</sup> A third location in Nörvenich in North Rhine-Westphalia can be reactivated if necessary.

The Bundeswehr Airbase at Büchel hosts the 33. Fighter-Bomber Wing (Jagdbombergeschwader 33) of the German Air Force. Both flights of the wing have been equipped with two-seated Tornado IDS fighter-bomber aircraft during the eighties and are designated for use in air-interdiction missions during times of war. This version of the Tornado is especially designed for low-altitude missions and can carry a variety of conventional bombs, submunition dispensers and missiles, but also U.S. nuclear weapons of Type B-61. Its active nuclear role

distinguishes the wing in Büchel from any other Tornado-wing of the German Air Force. The 33. Jagdbombergeschwader is Germany's contribution to the technical dimension of nuclear sharing.

In peace time Tornado-crews at Büchel are trained for nuclear missions. Nuclear weapons would be provided by the U.S. during times of war onsite. Theoretically, up to 44 of these weapons can be stored in the eleven nuclear weapon storage vaults (WS3-vaults) which are located beneath the floor of the hardened aircraft protective shelters. They are contained in extractable safety magazines permitting access only after the vault is opened. Each magazine, externally monitored by special technology, can be used to store up to four weapons. The vaults are supposed to guarantee safe storage of nuclear weapons and prevent even heavily armed terrorists' access to the weapons for at least 30 minutes.

About 20 nuclear weapons of Type B-61 are said to be deployed at Büchel. For training purposes they are not needed anymore since dummies are available for both pilots and technicians. Büchel still holds one dummy of the older Type 3A and six of the modern Type 3E, introduced in 2001.

More than one hundred U.S. specialists are deployed at each of the airbases of the European host nations. They are responsible for maintenance and access to these nuclear weapons. They serve in special units called Munitions Support Squadrons (MUNSS). The 702. MUNSS (up until 2004 it was called 852.MUNSS) serves at Büchel and is subordinate to the 38. Munitions Maintenance Group, stationed at the U.S. Airbase Spangdahlem close by. MUNSS soldiers have the responsibility to prevent any single soldier, especially a German soldier, from gaining access to a nuclear weapon without escort. Host nation airbases, where nuclear weapons are deployed, also have larger additional security units. The Bundeswehr refers to them as 'Luftwaffensicherungsstaffel S' – as in 'Sonderwaffen' (special weapons). They belong to the military airbase group and only Büchel has such a formation.

Theoretically, the airbase at Nörvenich also could be used for the storage of nuclear weapons. It hosts eleven protective aircraft shelters with underground magazines for nuclear weapons. But these remain unused since the mid-nineties when the base was downgraded from active to caretaker nuclear status. The German Luftwaffensicherungsstaffel "S" and the U.S. MUNSS at Nörvenich were dissolved. The 31. Jagdbombergeschwader, equipped with Tornado IDS, now is designated to carry out conventional missions. Nevertheless, Nörvenich could be reactivated in its role for nuclear sharing since it still has a "caretaker" status. A similar status existed at Memmingen Airbase until it was closed down completely.

The largest stockpile of nuclear weapons in Europe can be found at U.S. Air Force Base Ramstein. Here 55 underground vaults for nuclear weapons were built underneath the floors of protected aircraft shelters. One of these vaults is obviously reserved for training purposes. The remaining 54 can take up a maximum of 216 Type B-61 bombs. About 130 weapons are said to be stored at Ramstein even though no nuclear capable aircraft are deployed on this base.<sup>25</sup> Ramstein, which also hosts the Headquarter of the U.S. Air Force in Europe (USAFE), has the function of a logistics hub for all other nuclear weapons stocks in Europe. Therefore, it also hosts C-130 Herkules transport aircraft, as part of the 86<sup>th</sup> Air Transport Wing. They can be used for the European-wide air transport of nuclear weapons. After retirement of the last nuclear certified C-141 Starlifters, transatlantic transports are now conducted by C-17 aircraft.

The nuclear weapons Type B-61 possess relatively modern safety systems. Three variants of the Type B-61 are probably stockpiled in Germany presently, each with a variable maximum yield. The B-61 Mk.3 has a maximum yield of 170 Kilotons, Mk.4 has 45 Kilotons and Mk.10 has 80 Kilotons. The yield of the latter version is still more than six times larger than the destructive power of the Hiroshima bomb. The B-61 Mk.10 was developed at the end of the eighties using the existing warheads of the

Pershing-II missile which became superfluous once the INF Treaty went into force. After their reconfiguration, the warheads returned to Europe.

Aside from Germany four other states provide NATO with dual capable aircrafts for potential use in nuclear missions: Belgium, Netherlands, Italy and possibly Turkey. Greece has participated until 2001. All in all, a total of about 480 nuclear weapons are deployed in those states and Great Britain – a number which has remained unchanged for the past ten years.

In all of these NATO states, these nuclear capable aircrafts need to be replaced by new models in the next 10 to 20 years. Already in 2001 the Pentagon's Nuclear Posture Review called for a decision to be reached after consultations in NATO whether the option should be drawn to design the Joint Strike Fighter as a dual capable fighter aircraft of the future and therefore as the nuclear delivery system for NATO states. In the meantime though, one of the most important advisory bodies to the Department of Defense, the Defense Science Board, suggested to opt out entirely from operating such dual capable aircrafts.<sup>26</sup>

Aside from the technical dimension of nuclear sharing Germany, like all other non-nuclear states in NATO, participates in the political dimension of nuclear sharing. Germany is fully integrated into the working structures of NATO's Nuclear Planning Group, in which all non-nuclear NATO states can participate. The NPG did meet twice per year, today it is convening annually. It discusses – mostly on basis of submissions by the USA – a wide range of issues which are of relevance to NATO. This includes NATO's nuclear armaments, their modernisation and technical aspects of those weapons as well as questions of nuclear arms control and disarmament. The NPG is a forum for discussions on nuclear strategy, on concepts for the role of nuclear weapons as military assets for NATO and for consultations on the use of nuclear weapons. The possibilities for nuclear consultations have been redone repeatedly since

the Athens Guidelines of 1962. Since 1992 these consultations are held on basis of the "Political Principles for Nuclear Planning and Consultation" of the NPG.

Nuclear consultations can be initiated either by Major NATO Commanders or by the member states. These consultations cover issues of risk assessment, measures to improve the combat-readiness, adjustments in deployment according to new operational requirements as well as the nature and scope of the operation itself.<sup>27</sup> On the one hand, NATO's military structure is tasked to plan in such a timely fashion in order to allow for consultations as an element of political control over nuclear weapons. On the other hand, it is supposed to guarantee sufficient military flexibility to act without consultations should, for instance, a surprise attack be imminent. In the end, these consultations are still following the maxim that they only occur if time and circumstances are permitting. If this is not the case, the nuclear power concerned decides on basis of military advice whether the use of nuclear weapons will be authorised.

If consultations do occur, they can include all aspects of NATO's planning work: The North Atlantic Council or rather the Defence Planning Committee - advised by the Military Committee and Major NATO Commands - will not only discuss the necessity, the political and military objectives of a nuclear campaign but also questions of target selection, the choice of weapons and the consequences of using or not-using nuclear weapons, or the question if and how NATO will communicate its intentions to employ nuclear weapons to an adversary. The General-Secretary of NATO has the responsibility to inform the nuclear powers about the results of the consultations in time for their decision on authorising the use of nuclear weapons. During their deliberations special weight is supposed to be given to the views of those states whose territories or armed forces would be most directly affected by the use of nuclear weapons.

In all of these discussions - though they never pre-empt the national decision to be

reached by the nuclear powers - Germany is involved, independent of its participation in the technical dimension of nuclear sharing.

#### 4. The NPT Review Conference

On May 2nd, 2005 another Review Conference on the Nuclear Non-Proliferation Treaty began in New York. It will end on May 27th. The member states have agreed to convene every five years. Currently, 188 states are participating in the NPT process, almost all states of the world. Many states regard the NPT as a cornerstone of the legal and political 'Acquis' on arms control, or rather on non-proliferation issues. This year more bad omens than usual loom above the conference.<sup>28</sup> Many fear that the conference might fail completely and that the non-proliferation regime could be weakened in the short-run and even undermined in the mid-term. These worries are based on three reasons:

One reason is the growing suspicion that more and more non-nuclear states will covertly become nuclear powers by using civilian nuclear programmes before eventually opting-out of the NPT. North Korea and Iran can be cited as examples.

A second reason is the growing dissatisfaction with the limited headway the nuclear powers make in regard to nuclear disarmament and that, triggered by U.S. nuclear plans for the future, this might even herald a renaissance of nuclear weapons.

Finally, fears grow that the nuclear potential of India, Israel and Pakistan - states which have not joined the NPT - and their nuclear status could be tolerated on a permanent basis.

The first worry is primarily held by the nuclear powers, but many non-nuclear states share their view. The second is regarded as relevant mainly by the considerable majority of the non-aligned and non-nuclear states. The third fear is shared primarily among the western states but increasingly resonates among others.

This explains the different interpretations by

the state parties to the NPT on the best course of action to strengthen the treaty in the future. Led by the U.S., the nuclear powers and their allies are striving to improve the non-proliferation dimension of the treaty. The majority of the non-nuclear states are instead insisting to bring nuclear disarmament to the centre of attention. While the first group fears that the NPT will erode because more and more states will use civilian nuclear programmes to cover their inching closer towards obtaining nuclear weapons, the second group argues that signals given by the nuclear powers, that they will hold on to their nuclear weapons indefinitely, will allow those weapons to become more important again and have counterproductive consequences for the main aims of the NPT. This could be seen as an invitation for nuclear proliferation.

The Federal Government of Germany is looking with mixed feelings to New York. It hopes that the conference won't fail and approves a 'balanced' outcome between the aims to strengthen non-proliferation and disarmament. With involvement of the Foreign Ministry, the Bundestag has passed a resolution which outlines the German position.<sup>29</sup> Furthermore, the European Union has agreed on a Common Position in which the member states take a united stand towards the Review Conference.<sup>30</sup> Both documents contain a number of proposals to strengthen non-proliferation and improve nuclear disarmament. Nevertheless, the measures to make the proliferation of nuclear weapons more difficult dominate quantitatively and qualitatively in both documents.

#### Endnotes

<sup>1</sup> Among others Deutscher Bundestag, Drucksache 15/5257, 13.4.2005 (FDP-Fraktion), Deutscher Bundestag, PlProt. 169.Session, Top 6, 14.4.2005 (Winfried Nachtwei, MdB, Grüne), Berliner Zeitung, 25.4.2005 (Angelika Beer, MdEP, Grüne), Frankfurter Rundschau, 29.4.2005 (Guido Westerwelle, MdB, FDP), Reuters 1.5.2005 (Gert Weisskirchen, MdB, SPD), AFP 2.5.2005 (Claudia Roth, MdB, Grüne)

<sup>2</sup> "Fischer begrüßt Forderungen nach Beseitigung von US-Atomwaffen", AFP, 2.5.2005

<sup>3</sup> "Struck kündigt Vorstoß in der NATO zu US-Atomwaffen an", dpa, 6.5.2005

<sup>4</sup> Speech by Joschka Fischer, Federal Minister of Foreign Affairs at the Opening Session of the 7<sup>th</sup> Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, 2.5.2005, p.7f.

<sup>5</sup> "Nuclear-weapon States, in cooperation among themselves and with non-nuclear weapon States, and with States not Parties to the Treaty, must refrain from nuclear sharing for military purposes under any kind of security arrangements." Statement by the Hon. Syed Hamid Albar, Minister of Foreign Affairs of Malaysia on behalf of the Non-Aligned States Parties to the Treaty on Non-Proliferation of Nuclear Weapons at the General Debate of the 2005 Review Conference, New York, 2.5.2005, p.3; Or: "Whereas the IAEA is the final arbiter in the case of compliance with article III, assessing compliance with articles I & II compels us during this conference to review the policies and doctrines of some military alliances, such as "nuclear sharing" in order to determine whether they conform with the obligations of states under the NPT or not. Such a review must take place in tandem with any other allegations regarding non-compliance; otherwise we would fail to fulfil the standards of fairness and equality of rights and obligations for all states parties, standards which must continue to be the bedrock for credibility of this Treaty." Statement by H.E. Ambassador Ahmed Fathalla, Assistant Foreign Minister for Multilateral Relations before the General Debate of the 2005 Review Conference of the NPT, New York, 3.5.2005, p.3

<sup>6</sup> Deutscher Bundestag: Drucksache 15/3609, p.27. In addition, it can be regarded as highly unlikely that the producing states of the Eurofighter or the involved industry would be willing to provide the U.S. Administration with a deep insight into the used technology - which would be necessary in order to receive nuclear certification.

<sup>7</sup> Among others see the proposed draft resolution "Glaubwürdigkeit des nuklearen Nichtverbreitungsregimes stärken – US Nuklearwaffen aus Deutschland abziehen" of the FDP-Faction in the German Parliament in: Deutscher Bundestag, DS 15/5257 of 16.4.2005 or the demand formulated by the Green Party MEP, Angelika Beer, in: Ingo Preissler: "Beer verlangt Abzug der US-Atomwaffen", Berliner Zeitung, 25.4.2005. The Belgian Senate did pass such a resolution - unanimously - in April.

<sup>8</sup> It would be appropriate that Germany should explain such a measure at NATO.

<sup>9</sup> Occasionally the U.S. used this argument if proposals of their NATO allies infringe upon the implementation of U.S. national nuclear strategy. Foreign Minister Joschka Fischer experienced this when Wash-

ington slashed out at his proposal that NATO should give up its nuclear first-use option. Today Washington could use the same line of reasoning again against the demands for a complete withdrawal of its nuclear weapons from European states since in the meantime it has assigned those weapons a supporting role in the U.S. strategy for operations of CENTCOM in the Near and Middle East. The argument would be weaker compared to the situation in 1998, since it would be a U.S. claim to infringe unilaterally upon the national sovereignty of the European host nation. Therefore, it can be assumed that the U.S. will respect the political will of the involved host nations. Nevertheless, the demand for a withdrawal of all U.S. nuclear weapons from one or more European country should include appropriate consultations at NATO as a precept of fair cooperation. Another frequently used argument is simply not valid anymore: "No nukes, no troops" - implying that Washington deploys troops only where it is permitted to store nuclear weapons. Today Europe is the only place on Earth where the U.S. maintain troops and nuclear weapons but definitely not the only place where U.S. troops are deployed.

<sup>10</sup> NATO: NATO's Nuclear Forces in the New Security Environment, Brussels, 18.2.2005

<sup>11</sup> A military requirement could theoretically only be constructed if NATO's strategy would be adapted to the U.S. national strategy and NATO would retain the option to use nuclear weapons to combat proliferation targets pre-emptively and preventively. This option is not only doubtful in regard to its military effectiveness. NATO states have repeatedly - lastly in 1999/2000 - rejected U.S. attempts to open NATO strategy for such an option. Its usefulness is also contested in the U.S., even by the most important scientific advisory body of the Pentagon, the Defense Science Board. Quoting from a statement on *Non-strategic nuclear systems*: "OSD Policy should consider eliminating the nuclear role for Tomahawk cruise missiles and for forward-based, tactical, dual-capable aircraft. There is no obvious military need for these systems, and eliminating the nuclear role would free resources that could be used to fund strategic strike programs of higher priority. To a great extent, their continuation is a policy decision." Defense Science Board: Future Strategic Strike Forces, Washington, February 2004, p.5-13f.

<sup>12</sup> Proposals by German Foreign Ministry officials to attach further pre-conditions to such a measure which have to be fulfilled by the nuclear-weapon states are rather counterproductive. Not only could they result in delays but they also could lead to a questioning of the already initiated political changes. This even holds true for the resort to an otherwise most interesting working paper on tactical nuclear disarmament which Germany presented in 2002 at the Preparatory Committee for the current Review Conference and which at the time received only a

limited positive resonance. "Non-strategic nuclear weapons", Working Paper submitted by Germany, NPT/Conf.2005/PC.1/WP.5, New York, 11.April 2002. Interestingly enough, some ideas from this paper were incorporated into Fischer's speech on May 2nd - providing reason enough for an inclusion of this warning in a footnote.

<sup>13</sup> Adenauer defended his view on 5.4.1957 with the famous statement: "Just differentiate between tactical and large nuclear weapons". And: "Tactical weapons are nothing more than just a further development of the artillery. Naturally we can not refrain from permitting our troops to also follow the newest developments in regard to normal armaments". Quoted from "Die Welt", 5.4.1957

<sup>14</sup> The NPG was opened in 1979 for the full involvement of all NATO members.

<sup>15</sup> More details on this approach can be read in the section "The Non-Proliferation Treaty and the Legality of Nuclear Sharing", as well as in: Martin Butcher, Otfried Nassauer et.al.: A Question of Command and Control, PENN-Research Report 2000.1, Berlin, London, Washington, March 2000

<sup>16</sup> Translation of the Treaty to be found at [www.auswaertiges-amt.de](http://www.auswaertiges-amt.de)

<sup>17</sup> Once the President of the USA authorises the use of nuclear weapons upon request of NATO's Supreme Commander and after the required authorisation codes are transmitted through secure U.S. lines of communications to Europe, local U.S. units can activate the weapons and - together with allied soldiers - equip the fighter aircraft with them. During the mission, planned by NATO staffs in advance, no U.S. soldiers would be on board.

<sup>18</sup> Working Paper Presented by the Members of the Movement of the Non-Aligned Countries, Parties to the Treaty, 1998 Preparatory Committee for the 2000 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons, 28. April 1998. This critique was repeated at the present Review Conference. See footnote 5 for the exact formulation.

<sup>19</sup> Written answers by Secretary of Defense Cohen in response to questions of Senator Harkin, posed at a hearing of the Senate Appropriations Committee October 21st, 1997

<sup>20</sup> A more extensive and detailed presentation of these thoughts can be found in: Martin Butcher, Otfried Nassauer et.al.: A Question of Command and Control – NATO, Nuclear Sharing and the NPT, PENN Research Report 2000.1, Berlin, London, Washington, March 2000. The wording of the Rusk-Letter is reprinted on page 41.

<sup>21</sup> Leonard Meeker, "Proposed Revised Articles of US Non-Proliferation Treaty, Memorandum", US Department of State, Office of the Legal Advisor,

Lyndon B. Johnson Library, 6. July 1966, original classification: Confidential.

<sup>22</sup> Evans Gerakas, David S. Patterson, and Carolyn B. Yee (eds.) "*Arms Control and Disarmament*", Foreign Relations of the United States, 1964-1968. Volume X. United States Government Printing Office, Washington, 1997, S.574.

<sup>23</sup> Final Declaration of the Third Review Conference of the NPT, reprinted in: Goldblat, Jozef, Twenty Years of the Non-Proliferation Treaty – Implementation and Prospects, Oslo, 1990, p.138ff.

<sup>24</sup> For the following also see: Hans M. Kristensen: U.S. Nuclear Weapons in Europe, Natural Resources Defense Council, February 2005, Washington DC.

<sup>25</sup> The newsmagazine "Der Spiegel" reports that the nuclear weapons at Ramstein recently have been temporarily relocated to the US due to extensive construction work at the site. See Ralf Beste and Alexander Szandar: "Atomarer Anachronismus", in: Der Spiegel, 21/2005, p.48-49.

<sup>26</sup> Defense Science Board: Future Strategic Strike Forces, Washington, February 2004, p.5-13f. see footnote 11.

<sup>27</sup> Even the deployment of delivery means or nuclear weapons geographically close to a region of crisis could have an escalating or de-escalating effect. Therefore, such measures are also part of the possible consultations.

<sup>28</sup> During the first week of negotiations the participating states could not even agree on a working agenda. According to Egypt the issue of nuclear disarmament has received not enough attention. Egypt belongs to the group of states which explicitly criticise NATO nuclear sharing.

<sup>29</sup> Deutscher Bundestag, Drucksache 15/5254

<sup>30</sup> Council of the European Union, Document 7633/05 approved as Document 7768/05 on 25.4.2005

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