Implications of Germany’s accession to the Treaty on the Prohibition of Nuclear Weapons

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Germany reiterates its commitment to nuclear disarmament in its declarations. In order to contribute to the preparations for the upcoming Review Conference of the Non-Proliferation Treaty (NPT), Germany hosted a meeting of the so-called Stockholm Initiative in Berlin on February 25, 2020. The Berlin declaration states: "We underline that past NPT commitments remain valid and form the basis for making further progress in fully implementing the treaty and achieving a world free of nuclear weapons." And further that: "Commitments must be implemented. We must advance nuclear disarmament, in accordance with Article VI of the NPT, and ensure that, in the interest of humanity, nuclear weapons will never be used again."

The obligation for nuclear disarmament in Article VI of the Non-Proliferation Treaty applies not only to the Nuclear Weapon States, but it explicitly refers to "Each of the Parties to the Treaty". Also, in Action 1 of the Final Document of the 2010 Review Conference, all States Parties of the Non-Proliferation Treaty committed themselves to pursue a policy that is fully compatible with the treaty and the goal of achieving a world without nuclear weapons. To recall the original wording: "Action 1: All States Parties commit to pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons".

The explicit reference to all States Parties raises the question of what Germany – beyond formulating demands on the Nuclear Weapon States – could do itself to make a concrete contribution to achieving a world without nuclear weapons. And how does Germany intend to ensure that nuclear weapons will never be used again?

It is logical that a world without nuclear weapons can neither be achieved nor maintained without a legal ban on this type of weapon. Knowledge of nuclear weapons production will not go away anymore. That is precisely why a legal prohibition is still important even after the future destruction of all nuclear weapons. This prohibition of nuclear weapons under international law was created in 2017 with the Treaty on the Prohibition of Nuclear Weapons (TPNW) within the framework of the United Nations and entered into force in January 2021.

As long as nuclear weapons exist, they can be used. Only their complete elimination can prevent that. As with the other two types of weapons of mass destruction, namely biological and chemical weapons, the establishment of a prohibition standard respectively was an essential prerequisite for their elimination. The TPNW corresponds to this principle, which has also proven itself in practice with various types of conventional weapons (such as anti-personnel mines). Weapons of
mass destruction can only be eliminated after a ban has been established under international law. If Germany really wants to make a contribution to the creation of a world without nuclear weapons, it would be advisable to accede to the TPNW. Therefore, the following demonstrates how Germany could join the TPNW and what implications this would have for Germany.

**Necessity to Withdraw the Nuclear Weapons Stationed in Germany**

This is probably the biggest change for Germany if it wants to become a State Party to the TPNW. Article 1(a) of the TPNW already contains the obligation under no circumstances to "develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices".

Except for the last point, Germany is already fulfilling these obligations under the NPT. However, as a contracting party to the TPNW, Germany would have to stop stationing American nuclear weapons on its territory. This is made clear in Article 1 (g) of the TPNW, in which the obligation of each State Party is stipulated to under no circumstances „Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control."

As a concession to States in which nuclear weapons from other countries are located, Article 4 (4) of the TPNW provides a possibility to join the treaty even before the removal of these weapons: "Notwithstanding Article 1 (b) and (g), each State Party that has any nuclear weapons or other nuclear explosive devices in its territory or in any place under its jurisdiction or control that are owned, possesses or controlled by another State shall ensure the prompt removal of such weapons, as soon as possible but not later than a deadline to be determined by the first meeting of States Parties. Upon the removal of such weapons or other explosive devices, that State Party shall submit to the Secretary-General of the United Nations a declaration that it has fulfilled its obligations under this Article".

If this article were to be applied, Germany would still have a few months after acceding to the treaty to process the withdrawal of the nuclear weapons stationed on German territory. It is conceivable that a federal government would want to send a political signal by joining the TPNW and that the details would only be formalized afterwards. Likewise, it might seem better for a federal government to first have formalized and finalized the withdrawal in detail before proposing ratification of the TPNW to the Bundestag. A practical option could be, for example, first signing of the TPNW by the federal government, so not all treaty obligations would have to be implemented at once. Then the withdrawal of the nuclear weapons stationed in Germany could take place and the ratification of the treaty by the Bundestag would represent the final step. Whether Germany would make use of this special provision or would only join the TPNW after the removal of the nuclear weapons does not change the need to remove the nuclear weapons stationed in Germany if Germany wants to become a party to the TPNW.

For many years there has been repeated discussion in German politics – quite independently of the TPNW – whether the stationing of American nuclear weapons in Germany should be ended. The changes in the geopolitical, military, and technological context over the past few decades have led to a sharp reduction in the importance of stationing these weapons in Germany. Accordingly, their number and that of the locations in Germany have also decreased. It is believed that now there are only 10–20 American nuclear warheads stationed at the Büchel airbase. One indication that the US no longer attaches much importance to forward stationing of nuclear
weapons in NATO countries was the recent silent withdrawal of some US nuclear warheads from Turkey. If Germany decides to end the stationing of nuclear weapons on its territory, the underlying agreements with the USA would have to be terminated and an agreed withdrawal under the highest security standards would have to be carried out in an orderly procedure. The geopolitical map of Europe has changed significantly since the 1950s. Back then, the atomic bombs stationed in West Germany were meant to be dropped on the GDR or Poland to stop a potential breakthrough attack by Soviet tank armies.

At present, however, there is conventional superiority of the USA and NATO over Russia, Germany is reunited, and Poland is a NATO ally, on whose territory Germany cannot imagine using nuclear weapons. Any use of atomic bombs against Russia itself would bring a very high risk of escalation up to an unrestricted global nuclear exchange. Furthermore, a potential nuclear attack on Russia could be undertaken by means such as ballistic missiles fired from submarines that cannot be intercepted as easily as nuclear-armed bombers can be shot down. The military benefit of the US nuclear warheads in Büchel is small, if any still exists at all. On the other hand, because of the American nuclear weapons stored there, Büchel obviously would be a prime target for a Russian first or second strike. Taking this into account, the withdrawal of US nuclear warheads would contribute to greater security for Germany.

For these reasons, proponents of the continued stationing of American nuclear warheads in Germany argue to a lesser extent in terms of a possible gain in military security for Germany, but emphasize their political function or role – on the one hand bilaterally with the USA for extended deterrence, and on the other hand with NATO alliance unity.

The longstanding bilateral relationship between Germany and the United States would have to be very poorly developed if it were regarded to rest on a few American nuclear weapons deployed on German soil. Either way, Germany is and will remain the USA's most important partner in continental Europe. German-American relations have withstood greater strains in recent years than could result from a withdrawal of US nuclear weapons initiated by Germany. A comparison with those NATO members who have no American nuclear warheads stationed on their territory – that is, the vast majority - reveals that they have no worse or less close relationship with the USA. Even within NATO, it does not seem to do any harm if countries do not participate in the nuclear arrangements.

However, some of those NATO partners to the east where no US nuclear warheads have been deployed could criticize Germany for terminating the longstanding stationing agreement. An act of solidarity would be demanded here, which these countries themselves do not provide. Such a poorly conceived criticism cannot be considered as effective in foreign policy practice. Belgium, Italy and the Netherlands, where the other American nuclear warheads still remaining in Western Europe are stationed, provide interesting contrasts. The federal government in Berlin could and should consult with the governments of these three states in advance of its decision to join the TPNW. It would be conceivable that some or all of these three countries could support Germany's decision and possibly also follow its lead.

Nuclear sharing stands in the way of joining the TPNW, because in addition to Article 1 (g) already cited above, Article 1 (c) of the treaty stipulates the obligation of each State Party under no circumstances to ever "receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly".

With the withdrawal of American nuclear warheads from German territory, nuclear sharing would automatically end. This would mean that the discussion about advantages and
disadvantages as well as the compatibility of nuclear sharing with the NPT would no longer be relevant, which is why this will not be discussed in more detail here.

**Desist from supporting actions prohibited under the TPNW**

For Germany, as for all other States Parties that are Non-Nuclear Weapon States under the NPT, the TPNW prohibitions in Article 1 (e) and (f) are particularly relevant for future behavior when acceding to the TPNW:

- e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
- f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;

Article 1 (e) of the TPNW corresponds literally to Article I (d) of the Chemical Weapons Convention to which Germany is a State Party. Therefore, Germany has many years of experience in applying this prohibition standard. In this context the interpretation of the prohibition of support on the commentary on the TPNW by Stuart Maslen-Casey (Oxford University Press, 2019) is noteworthy. “In any way” refers to both direct and indirect actions relating to nuclear weapons and their key components, where the State Party is aware of the recipient’s intention to use them for nuclear weapons. This helps with a concrete delimitation, whether it is research projects or the manufacturing and export of goods. The States Parties are therefore still permitted to export to companies involved in nuclear weapons projects under the TPNW, as long as such goods do not represent key components that are intended for the construction or maintenance of nuclear weapons.

Relevant German institutions and companies would have to adapt to the new legal situation. All the more so, as corresponding laws would be enacted in the context of national implementation in accordance with Article 5 of the TPNW. German companies, especially larger ones, have a good track record in the implementation of the new export control regulations that have been added in recent years. They would be well positioned to adapt to necessary adjustments.

A cause for an action prohibited in the contract is a narrower concept that amounts to giving an incentive to initiate actions prohibited under the TPNW. This would include, for example, the delivery of fissile material to a Nuclear Weapon State so that it can manufacture nuclear warheads. Since Germany hardly exports fissile material to other states for the purpose of manufacturing nuclear weapons or taking other measures to initiate nuclear weapons projects, it is not to be expected that drastic changes will be necessary here.

Financing and investing in nuclear weapons is not specifically prohibited under the TPNW. During the treaty negotiations, the opinion prevailed that this does not require a separate ban. Funding a nuclear weapons programme would come under support, although a causal link would be required. On the other hand, an investment in a company that is also involved in nuclear weapons programmes, among other things, would not fall under the prohibition in Article 1 (e). For Germany, this distinction could be relevant with regard to joint German-French companies such as Airbus.

Encouragement is the process of convincing someone to do something that they can do with their own capacities. A few authors wanted to see in the language of some declarations by NATO or the NATO strategy of 2010 an encouragement by the NATO members to adopt a behaviour of the
Nuclear Weapon States that would fall under the prohibitions of the TPNW. This reasoning cannot be legally valid because joining the TPNW supersedes older obligations that conflict with the content of the treaty. Nevertheless, the compatibility of the legal obligations from the TPNW with NATO membership will be examined below.

**Does NATO Membership Encourage Actions Prohibited by the TPNW?**

Membership in NATO is legally based on the North Atlantic Treaty. It does not mention nuclear weapons or nuclear deterrence. There is therefore no legal impediment to a NATO member like Germany being a State Party to the North Atlantic Treaty and the TPNW and to fulfilling its obligations under both treaties.

The currently applicable NATO strategy from 2010 describes the alliance as a "nuclear alliance", but without creating a legal basis for it. Specifically, the preface to the 2010 NATO strategy asserts that: "It commits NATO to the goal of creating the conditions for a world without nuclear weapons - but affirms that NATO will remain a nuclear alliance as long as there are nuclear weapons in the world." The commitment to the goal of creating the conditions for a world without nuclear weapons also includes the obligation to create a legal ban on nuclear weapons. Without such a legal prohibition norm, it will logically not be possible to establish a world without nuclear weapons. The second part signals that NATO countries will be the last to have nuclear weapons. With such a position, the conditions for a world without nuclear weapons can hardly be created; rather, this view leads to the reverse conclusion that nuclear weapons will exist as long as NATO remains a nuclear alliance. This assertion also provides other states with a pretext and justification for building and expanding their nuclear arsenals.

Point 9 of the 2010 NATO strategy points to the dangers of nuclear weapons when it is stated that "The proliferation of nuclear weapons and other weapons of mass destruction, and their means of delivery, threatens incalculable consequences for global stability and prosperity". These internal contradictions, which are not atypical for compromise texts, can also be found in point 17: "Deterrence, based on an appropriate mix of nuclear and conventional capabilities, remains a core element of our overall strategy. The circumstances in which any use of nuclear weapons might have to be contemplated are extremely remote. As long as nuclear weapons exist, NATO will remain a nuclear alliance."

The conclusions in point 19 make it clear that not all NATO members need to participate in the nuclear component, because "an appropriate mix of nuclear and conventional forces" should be maintained and that "the broadest possible participation of Allies in collective defence planning on nuclear roles, in peacetime basing of nuclear forces, and in command, control and consultation arrangements" is ensured. "The broadest possible participation" implies that not all NATO members have to participate and that there is definitely room for national differences – as is actually self-evident for an alliance of independent democratic states.

Finally, in point 26 of the 2010 NATO strategy, arms control, disarmament and non-proliferation are dealt with comprehensively. This explicitly sets out the considerations on which the TPNW is based, such as the fact that disarmament contributes to peace, security and stability, the determination to strive for a safer world for all and to create the conditions for a world without nuclear weapons, and the endeavour to create the conditions for further reductions in the number of nuclear weapons stationed in Europe in the future.
There are therefore both formal, legal and substantive reasons why the 2010 NATO strategy does not stand in the way of a NATO member becoming a State Party to the TPNW. The fact that two former NATO Secretaries General, Javier Solana and Willy Claes, have publicly called on the NATO States to join the TPNW is a clear indication that this is not only possible for NATO members, but from the point of view of the two former highest NATO officials it is even desirable.

Since neither the NATO strategy nor NATO declarations, which sometimes emphasized the nuclear component, have created corresponding legal obligations, there is no need for an actus contrarius for joining the TPNW. In future declarations, Germany could either demand them to be drafted in line with its national position on the basis of the principle of consensus, or simply distance itself with a footnote on individual points, as other NATO members have done so far.

In fact, the previous practice of the individual NATO countries with regard to their involvement in activities with nuclear weapons has varied considerably. Not all participate in the Nuclear Planning Group, not all permit the introduction of nuclear weapons into their territory, and not all allow allied nuclear-armed ships to enter their ports. There is a great deal of room for manoeuvre for every single NATO member, and Germany could also use this in the sense of fulfilling its obligations under the TPNW, should it join it.

At the practical level, Germany, as a State Party to the TPNW, would no longer take part in nuclear weapons planning and exercises. A large number of NATO members are already not participating in the Steadfast Noon exercises. The dissemination of intelligence information would continue unreservedly, except for information clearly related to the conduct of a nuclear weapons operations. Overflight and harbouring rights in German ports would continue to be granted if the applicant did not state that nuclear weapons were on board or the authorities would get to know it otherwise. In the same way, military installations of Nuclear Weapon States or NATO could continue to be maintained and operated in Germany, provided they are not used for nuclear weapons and for the practice of deployments of this weapon of mass destruction. This also applies to the use of German or shared infrastructure.

The further question arises whether the non-participation of individual NATO members in the nuclear dimension would jeopardize the interoperability of the armed forces. This problem has already been dealt with in the past with anti-personnel mines and cluster munitions, when some NATO members acceded to the corresponding prohibition conventions and others, especially the USA, did not. The solution is that the Allied forces remain interoperable and can practice with each other and conduct joint military operations. However, the States Parties to the corresponding prohibition conventions will not take part in the laying of mines or the dropping of cluster munitions. This has been going on for two decades without any complaints about harm to the cohesion or defence capabilities of NATO. While anti-personnel mines and cluster munitions are weapons that any army could obtain and use, nuclear weapons are by their very nature such that Nuclear Weapon States do not want to relinquish their control over them. The participation of alliance partners will therefore be even less relevant for conducting military exercises or operations involving nuclear weapons.

Under the TPNW, military cooperation with Nuclear Weapon States is in no way restricting the conventional area. In fact, several States Parties to the TPNW maintain close military cooperation with the USA, such as New Zealand, the Philippines and Thailand. Others participate in NATO operations such as Austria that is one of the largest troop contributors to KFOR. The ratification of the TPNW has not changed this cooperation with Nuclear Weapon States or NATO. Germany, too, would continue its strong military cooperation with the USA, the United Kingdom and France as well as within NATO as a State Party to the TPNW, with the exception of the nuclear component.
The question asked at the beginning, whether NATO membership constitutes an encouragement to activities prohibited under the TPNW, has to be answered clearly in the negative, as has been shown in the preceding discussion.

**Nuclear Deterrence and the TPNW**

A country that desires "protection" through nuclear weapons for the future - be it their own or that of an allied nuclear-armed State - advocates the retention of this weapon of mass destruction. Such a State does not intend to fully comply with Article VI of the NPT and does not strive for the goal of "peace and security in a world without nuclear weapons" to which all contracting parties to the NPT have committed themselves in 2010, 2000 and 1995. A security policy that aims to build on the maintenance of nuclear weapons in the future is in opposition not only to the TPNW, but also to the NPT.

In the preamble to the TPNW, concerns about "the continued reliance on nuclear weapons in military and security concepts, doctrines and policies" are expressed. It goes without saying that a country which - in contrast to the overwhelming majority of states - sees "protection" by nuclear weapons as a cornerstone of its policy, will hardly strive to ban them and certainly will not join the legal prohibition norm.

Whether the concept of nuclear deterrence in the era of the Cold War was useful to prevent a direct military conflict between the Soviet Union and the USA cannot be scientifically proven. It is a fact, however, that circumstances have changed significantly since then. There are no longer two opposing military blocs, but rather nine nuclear armed states in our world that itself has become multipolar. Cyber-hacking of nuclear weapon systems has become possible so that nuclear weapons would no longer be reliable in an emergency. Technological advances such as nuclear-headed supersonic missiles, which can hardly be intercepted because of their speed (up to 20 times the speed of sound) and their non-ballistic trajectory, make it possible to carry out a largely successful first strike and thus make the nuclear deterrent appear ineffective. All of this has made the concept of nuclear deterrence, in case someone ever believed in it, even less credible today. What remained unchanged, however, is that nuclear deterrence could only work if one is actually prepared to exterminate millions of people, with one's own population also being severely affected. The current nuclear arsenals would be enough to end human existence.

The extended deterrent seems to be most popular where the likelihood is lowest that the allied Nuclear Weapon State would actually come to the rescue with its nuclear weapons. Kissinger already put it clearly: "Great powers do not commit suicide for their allies." Understandably, the decision about the use of nuclear weapons does not lie with the alliance members but is and remains exclusively with the commander-in-chief of the Nuclear Weapon State. This implies that in an emergency it ultimately makes no difference whether one is under the nuclear "protection" of a nuclear weapon state or not. The interests of the Nuclear Weapon State will determine whether, where and when nuclear weapons are used. From this perspective it becomes then actually irrelevant whether a country has renounced nuclear "protection" or not.
**Expected reactions to a German accession to the TPNW**

When Western European States showed their intention to join the TPNW, Western Nuclear Weapon States began to exert pressure. In some cases, completely exaggerated arguments such as endangering economic cooperation were used and attempts were made to instrumentalize NATO. While the USA and the UK stayed within the expected range of criticism, France went far beyond this. This created displeasure at the highest political level in the Western European TPNW States, which ultimately made the interventions counterproductive.

This pressure disappeared suddenly once the TPNW was ratified. None of the threatened negative consequences occurred. This is not surprising, because the interest in a good bilateral relationship and the benefits from it are mutual. The spectrum of bilateral relations is very broad and varied, the question of joining the TPNW is only a very small part of it.

Particularly in view of the close Franco-German cooperation, it seems likely that France will initially do everything possible against Germany’s accession to the TPNW and will quickly return to normal close cooperation after ratification. The greatest danger here is that excessive campaigning and interference could lead to anger among German politicians and citizens, which could cause some damage to the bilateral relationship. An attempt could be made to avoid this through open communication with Paris in the sense that Germany’s sovereign decision has been made and by calling not to damage the close cooperation with interference that could lead to anti-French resentment.

Good communication with the US and UK, along with their pragmatic approach, could allow for a more factual treatment of the issues outlined above. All questions arising from the obligations under the TPNW are solvable and both sides should seek good, relevant solutions. Within NATO, Germany is not the only country in which leading political forces advocate joining the TPNW. But it looks like the smaller NATO countries would rather not go ahead and would like to see Germany in the role of the icebreaker. The likelihood is high that Germany will not remain the only NATO State to join the TPNW for long. In view of the similar interests in countries such as Norway, Iceland, the Netherlands, Belgium, Spain and Italy, the possibilities could be examined whether a coordinated approach can be pursued. This would reduce the pressure within NATO.

The Eastern European NATO members have a great interest in maintaining the stationing of US nuclear weapons in Europe because they still believe in their tripwire function but overlook the fact that they would be among the first victims of a military confrontation in Europe. They are also most strongly attached to the myth of nuclear deterrence, although this would not be a guarantee for them in an emergency. Therefore, the Eastern European NATO members would be negative about a German accession to the TPNW but could do little about it. All the more so, since they have no US nuclear weapons stationed on their territory and thus cannot demand solidarity, when it comes to a removal of nuclear weapons from Germany.

Traditionally, there is no common stance on nuclear disarmament within the EU. The accession of Germany would therefore have no consequences in terms of integration policy. Austria, Cyprus, Finland, Ireland, Malta and Sweden have already ensured that nuclear weapons do not find a place in the Common Security and Defence Policy.

Russia and non-European nuclear armed states such as China and Israel would probably refrain from interfering. Russia and France are indeed the strongest opponents of the TPNW, but the prospect of a withdrawal of American nuclear warheads from Germany - which seems likely even
without the TPNW - and the hope that there could be discord within NATO should result in a more positive view in Moscow. Russia can hardly influence whether there will develop lasting frictions in NATO. This will depend above all on a level-headed reaction from the Western Nuclear Weapon States.

The overwhelming part of the international community would welcome Germany's accession to the TPNW. In Africa, Asia and Latin America in particular, this would also be seen as a step towards German emancipation from the policies of the Western nuclear powers. In terms of domestic and foreign policy, joining the TPNW would be seen as a sign of German policy being more strongly determined by its own interests than those of the three other large Western countries. A first step in realigning the German stance could be participation as an observer in the First Meeting of TPNW States Parties in 2022 in Vienna.

In conclusion, it can be stated that Germany's accession to the TPNW is politically and practically possible and feasible. Like any other political step, it would meet resistance and approval at the same time, but in the long term it would not change the close relationship with the USA, France and the other European partners. Accession to the TPNW is compatible with NATO membership. Ultimately, it has to be decided whether one wants to take a political step that is in line with one's own values and the will of the majority of the population or not.