



PEACE RESEARCH INSTITUTE FRANKFURT

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Nuclear Weapons and German Interests: An Attempt at Redefinition

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PRIF-Report No. 55/2000

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Summary

Since 1995, a new debate about nuclear weapons has been under way. This no longer relates only to arms control, but also to the possibility of the complete elimination of these weapons of mass destruction. Germany, torn between, on the one hand, its identity as a non-nuclear-weapons state, and, on the other, its membership of NATO and the WEU and its close links with France, the USA, and Britain, occupies an awkward position in this debate. It is not easy for it to define its own interests, let alone formulate a coherent policy.

In the past, the German stance combined verbal support for nuclear modernization with a high degree of loyalty to positions deriving from NATO's strategy of first use of nuclear weapons against conventional and other types of military threat. Gradually, a separate German position, sometimes showing a marked divergence from that of certain other members of the alliance, crystallized out. Underlying this was the desire to keep the discrimination resulting from Germany's distinct status to a minimum - not least as regards the competitive interests of the German nuclear industry. This concern was expressed in demands for an extension of international verification measures in nuclear-weapons states, and for greater transparency in regard to the stocks of weapons and fissile material held by such states.

The dramatic changes in the German security situation after 1990 did not lead to any radical redefinition of the German position on nuclear weapons, even though, in 1997, notice was given for the very first time of the conditions in which the German government might contemplate their complete elimination: reliable systems of verification, guaranteed security by non-nuclear means, complete elimination of stocks of fissile material intended for military purposes. This study aims to provide the missing redefinition.

From this perspective, factors such as

- self-restraint in power politics
- European and Atlantic ties
- multilateralism, and
- regard for international law

may be seen as key components of German national interest, and not - as critics of German foreign policy have recently increasingly tended to do - as an expression of idealistic ideology. This definition of Germany's interests enjoys broad, cross-party political consensus within the country, even if that consensus does not necessarily extend to the modalities of its implementation.

Translating the consequences which this definition of German national interest has for nuclear policy into practical terms, we arrive at the following elements:

- continued renunciation of nuclear weapons
- reduction/elimination of discrimination resulting from status
- strengthening of the principle of non-proliferation

reduction in the military and political role of nuclear weapons and, ultimately, actual nuclear disarmament

German security within the multilateral framework is also best served by containing the threats that result from the loss of control over Russian nuclear weapons and from the residual risk of political regression by applying disarmament measures. Progress in the disarmament process is, in any case, indispensable as a way of strengthening the non-proliferation regime. Whichever way one looks at it, disarmament turns out to be in the German interest.

By contrast, the classic security function of nuclear weapons within NATO strategy - namely, to offset what the West perceived as the advantage to the Soviet Union from the imbalance in conventional, chemical, and biological weapons, and to scupper any idea which the Soviet leadership might have had of engaging in a war of aggression - has disappeared. These preconditions of NATO doctrine, including first use, the deployment of tactical nuclear weapons in Europe, and opposition to the complete elimination of nuclear weapons, no longer apply. As a result, the German interest in disarmament now takes precedence.

The limits to this interest lie at the point where uncompromising prosecution could lead to serious alienation from Germany's most important partners. The basis of relations with France, Britain, and the USA must not be jeopardized by a radicalism that takes no account of the sensitivities of these nuclear-weapons states. Of course, the correct alternative is not anticipatory subservience. Being prepared for a degree of conflict is essential. The restraint in question here relates to style and strategy, not to basic stance and long-term objectives. This requires that these principles be formulated in a clear and, if necessary, controversial form, and that the interim measures which one believes can be expected of one's partners be proposed and prosecuted even where they initially meet with resistance.

From the point of view of security, attention should be focused on tactical nuclear weapons, for the reasons set out above. The huge Russian arsenal, which numerous reports have shown to be inadequately controlled, is a source of risk that has to be neutralized. To achieve this, it will make sense, in any event, to put the tactical nuclear weapons which NATO has deployed in Europe up for consideration. If a complete renunciation of all tactical nuclear weapons cannot be achieved straight away, consolidation within central sites in the USA and Russia (if possible on the far side of the Urals) would be a second-best solution - in which case drastic reductions on the Russian side would be appropriate. One possibility, as an interim step prior to the complete elimination of tactical nuclear weapons, would be to agree to as low a level of stocks as possible. A second priority would be to achieve as great a degree of de-alerting as possible of strategic arsenals, thus drastically reducing the danger of an erroneous or unauthorized launch of nuclear-armed missiles.¹

1 Bruce G. Blair/Harold A. Feiveson/Frank von Hippel, 'Taking Nuclear Weapons Off Hair-Trigger Alert', *Scientific American*, Nov. 1997; Jonathan Dean, 'De-alerting: A Move towards Disarmament', *UNIDIR Newsletter* (July 1998).

As regards the goal of reducing discrimination, three measures must have priority. The first is transparency of the nuclear-weapons arsenals and stocks of fissile materials destined for military purposes, to be assured through the creation of a register.² Transparency of this kind would act as a counterweight to the privileged position of the nuclear-weapons states and would firmly establish the principle of accountability. The second priority is to provide the Cut-off Treaty with a comprehensive verification-system which would place nuclear-weapons and non-nuclear-weapons states more or less on a par in terms of verification obligations. Thirdly, the handing-over of fissile material removed from military use to the International Atomic Energy Organization for verification should be made both compulsory and irreversible.³

Given its interests, it seems inappropriate for Germany to play the role of trusty henchman to the Western nuclear-weapons states. Like Canada and Australia - both reliable allies of the USA - Germany should opt for the position of 'bridge-builder' between the nuclear-weapons states and their non-aligned critics.

2 Harald Müller, *A Nuclear Weapons Register: A Good Idea Whose Time Has Come* (HSFK: PRIF Report 51; Frankfurt/M., 1997); see also James Goodby, 'Casting a Wider Net: Nuclear Arms Negotiations beyond START II', in Harold A. Feiveson (ed.), *The Nuclear Turning Point. A Blueprint for Deep Cuts and Dealerting of Nuclear Weapons* (Washington D.C.: Brookings, 1999).

3 Annette Schaper, 'The Case for Universal Full-Scope Safeguards on Nuclear Material', *Nonproliferation Review*, 5 (1998), 2: pp. 69-80.

Contents

1.	Introduction	1
2.	The Context: The Stagnation in Arms Control	2
3.	Stages in the German Nuclear Debate	5
3.1	Security Aspects	5
3.2	Economic Aspects	8
3.3	Possible Changes under the New German Government	9
4.	German Interests and Nuclear-Weapons Policy	10
4.1	On the Impossibility of the ‘German Option’	10
4.2	The Obsolescence of the NATO Doctrine	11
4.3	On the Improbability of the ‘European Option’	15
4.4	Non-Proliferation and the Acute Risk to the NPT	16
4.5	Eliminating Discrimination	20
4.6	The German Concern with Law in relation to the Inhumanity of Nuclear Weapons	21
5.	Prospects: The Interests of Non-Nuclear-Weapons Germany and the Dilemma over the Alliance	23

1. Introduction

The threat that emanates from the existence of nuclear weapons seems to have been largely banished from the public mind. The feeling of acute danger that was essentially ever present during the Cold War has disappeared. The days when anxiety about the consequences of nuclear modernization drove millions onto the streets are gone.

And yet nuclear weapons have not gone away. As long as they continue to exist, so does the risk of their deliberate or accidental use, with incalculable consequences. The public takes only sporadic cognizance of this - when new bits of news about problems of control in Russia trickle out, when emerging countries in South Asia test nuclear devices, or when rumours about nuclear-weapons programmes in the Middle East find their way into the headlines.

Nuclear weapons at all events represent a hard fact of world politics. They divide the world into nuclear-weapons states and 'have-nots'. They constitute a potential for destruction unprecedented in world history and they thereby raise a fundamental question of political ethics: Could or should countries base their security on the threat of genocide?

A medium-sized power such as Germany cannot sidestep this question. Germany is tied into contexts in which nuclear weapons play a fundamental role: NATO, the European Union, the Non-Proliferation Treaty (NPT), the Geneva Conference on Disarmament (CD), and, finally, the United Nations.

The German stance on nuclear weapons must be determined in relation to those foreign-policy interests which are accepted with near-unanimity as being national interests of Germany:

- a close relationship with France, and integration within the European Union
- maintenance of the transatlantic bridge, and integration within NATO
- judicious self-restraint, whereby Germany, whilst being allocated an appropriate role in the fulfilment of international obligations, is discouraged from unilaterally developing its military power
- rooting German security in an international culture of co-operation
- a major role for arms control and disarmament within this international co-operation
- finally, the strengthening of international law and International Organizations

This list of principles does not, as is sometimes falsely claimed, spring from an unworldly idealism. In fact, it reflects quite precisely the experiences of the last one hundred and twenty years of the history of the German nation-state: too strong not to present a problem for European equilibrium; too weak itself to dominate the continent. As a power with limited opportunity for military development, the country depends crucially on the

expansion and deepening of international law - in other words, on the increasing juridification of international politics.⁴

This is why arms control and disarmament have occupied a key position in the policies of successive federal German governments since 1969. Emphases undoubtedly differ, but the political élite is essentially agreed that these two factors constitute an indispensable element of German security policy. From the German point of view, it is therefore a matter of some concern that this particular domain of politics is currently threatened with stagnation, if not major reversal.

A brief account of the situation in international arms-control and disarmament policy is given in the second section of this paper, in order to establish the framework within which the German stance on nuclear weapons is located. The third section traces the various stages of the German debate and analyses the factors underlying the positions adopted by Germany over the last fifty years. The fourth section seeks to elucidate the problems with which German politics currently finds itself confronted and makes recommendations for solutions consonant with the German interests listed at the outset. The final section highlights the fact that Germany's interests as a non-nuclear-weapons state and as an ally of friendly nuclear-weapons states is not free of contradictions and dilemmas.

2. The Context: The Stagnation in Arms Control

After the end of the East-West conflict, arms control and disarmament underwent a boom. Within a short space of time, agreements were concluded of a boldness and extent which no one would have dared dream of in the preceding decades. Europe - indeed, the world as a whole - appeared to be heading for an era of co-operative security-policy in which self-help would be no more than a subsidiary, back-up option. These golden dreams have now evaporated. What we have instead is a standstill - if not, indeed, a dangerous slide backwards:

START II, the most important nuclear disarmament treaty on the agenda, remains stymied in the Russian Duma. Although the USA and Russia have agreed to talks about START III, the US Senate's ratification resolution forbids any further reduction until START II has been ratified by Russia. This means any further steps to reduce strategic nuclear weapons, and any first-time regulations for tactical nuclear weapons, are blocked.

The ABM Treaty is being undermined by the conservative majority in the US Congress. In spring 1999, both houses of Congress approved the deployment of a countrywide missile defence system as soon as this was technically possible. The Clinton administration has now accommodated itself to this goal. Thus, a policy that clearly runs counter to the substance of the ABM Treaty is now embodied in American law. The Republicans want an early deployment of a countrywide missile defence system even though the development

4 For a detailed account of this, see Harald Müller, *Macht und Ohnmacht. Deutsche Außenpolitik vor dem Ende?* (Frankfurt/M.: Alfred Herrhausen Gesellschaft für internationalen Dialog, 1998). See also Eckhard Lübbkemeier, *Interdependenz- und Konfliktmanagement. Deutsche Außenpolitik am Beginn des 21. Jahrhunderts* (Friederich-Ebert Stiftung: Studien zur Außenpolitik, 74; Bonn, 1998).

tests carried out so far indicate that the technology is far from ready for the task. And yet the treaty - the cornerstone of nuclear arms control - is to be abandoned. The American and Russian governments have, it is true, agreed on a binding distinction between tactical and strategic missile defence; but it is unlikely that the Senate will be willing to ratify this protocol to the ABM Treaty.⁵ And without a guarantee of the continuance of the ABM Treaty, Russia is hardly likely to agree to further measures of nuclear disarmament.⁶

The progress towards greater transparency which both Russia and the USA were seeking to achieve is currently crumbling in the face of continued opposition by the Russian defence ministry, which, in view of the wretched situation of its armed forces, sees nuclear weapons as offering the only guarantee of national security and - as in Soviet times - regards transparency as a synonym for espionage.

Despite what have recently been positive signals from Islamabad and New Delhi, it is uncertain whether the test ban will come into force in the foreseeable future. North Korea must also ratify if the condition for coming-into-force is to be fulfilled; so far, it has shown no sign of doing so. Ratification by the American Senate and the Russian Duma is also looking uncertain.

The start of negotiations on the production of fissile material for military purposes (Fissile Material Cut-Off or FMCT) was delayed for years by dissension between the parties at the Geneva Conference on Disarmament. The agreement about the negotiating mandate in summer 1998 came too late for the start of negotiations, and had to be secured anew at the beginning of the next session. In 1999, the same game went on, and this will begin all over again in January 2000. Given the differences of interest between the various protagonists, and given the uncertainty of many governments (e.g. Israel) as to whether such a treaty is in their interests, success is anything but assured.

There are other topics on which the CD is failing to make any progress. This blockade is being caused on the one hand by the total refusal of the nuclear-weapons states even to discuss the subject of nuclear disarmament, and, on the other, by the uncompromising all-out demand of many non-aligned states that these kinds of talks should be converted forthwith into negotiations about the precise juncture at which a nuclear-weapons-free world is to be achieved in definitive, binding form.⁷

The nuclear tests in South Asia have dealt a grave blow to the Non-Proliferation Treaty. There is, in any case, a deep division in the treaty membership between the nuclear-weapons powers and the non-nuclear-weapons states, particularly those in the non-aligned camp. This has been demonstrated by the current sessions of the preparatory committee for the next Review Conference. Above all, the impression is beginning to harden that some

5 Jack Mendelsohn, 'Rogues, Russians and Reductions: The ABM Treaty and National Missile Defenses', *Disarmament Diplomacy*, 31 (Oct. 1998), pp. 12-15.

6 John Isaacs, 'Missile Defense: It's back', *Bulletin of the Atomic Scientists*, May-June 1999, pp. 27-8.

7 Rebecca Johnson, 'Geneva Update', *Disarmament Diplomacy*, 29 (Aug.-Sept. 1998), pp. 16-25.

nuclear-weapons states are minded to ignore the obligations newly entered into in 1995 - the very means by which broad assent to an unlimited prolongation was secured.⁸

The Chemical Weapons Convention (CWC) is being undermined by the unilateral conditions which the Senate appended to the ratification resolution: this resolution gives the US president the right to refuse inspections of suspect facilities on grounds of national security; again, no samples from chemical plants in the USA may be taken out of the country for analysis. This is tantamount to the kiss of death for the CWC verification-system. The Organization for the Prohibition of Chemical Weapons (OPCW) is still waiting for the long-overdue declarations from those American chemical plants that are formally required to submit themselves to inspection. As a result, the US industry enjoys complete freedom from inspection whilst its rivals elsewhere are open to scrutiny by the OPCW inspectors.⁹

The negotiations on a verification and transparency protocol for the Biological Weapons Convention (BWC) are in danger of becoming bogged down: a group of states from the developing countries and the industrialized world regard the proposed verification-measures as posing too much of a threat to their own industries. As is the case with all verification systems that relate to (permitted) civilian and (prohibited) military applications, such a system must consist of notifications, routine inspections to establish the accuracy of the latter, observation, and inspection of suspect facilities. But routine inspections in particular are a matter of great controversy amongst the parties to the negotiations.

The negotiations on the reform of the Treaty on Conventional Armed Forces in Europe (CFE) managed, by the narrowest of margins - and to a large extent thanks to the huge efforts of German diplomats - to avoid total breakdown. The USA wanted such broad freedom of action in the temporary transfer of troops that the stability-enhancing purpose of the treaty would have been nullified; Russia wanted to dispense completely with the flank regulation - that is, the imposition of special limits on deployment in the north and south - a move that would totally disregard the security interests of its neighbours.¹⁰

The Open Skies Treaty cannot come into force, because Russia and the Ukraine have not ratified it.

Contrasting sharply with these negative developments in international arms-control policy is the lively debate about the future of nuclear weapons. In 1995, the non-aligned states allowed an indefinite extension of the Non-Proliferation Treaty to be wrung from them only in exchange for a clear promise by the nuclear-weapons states that they would undertake tangible steps towards a nuclear-weapons-free world. Since then, there have been numerous studies, and numerous appeals by prominent politicians and members of

8 *PPNN Newsbrief*, 42 (1998), 2: pp 1-3.

9 Alexander Kelle, 'Assessing the First Year of the Chemical Weapons Convention', *Nonproliferation Review*, 5 (1998), 3: pp. 27-35.

10 Hans-Joachim Schmidt, *Die Anpassung des KSE-Vertrages: Konventionelle Rüstungskontrolle zwischen Bündnisverteidigung und Kooperativer Sicherheit* (HSFK: HSFK-Report 1; Frankfurt/M., 1998).

the military, concerned to find a realistic disarmament strategy that will also allow for the preservation of national and international security.¹¹ These include, most notably:

- the report of the Canberra Commission¹²
- the 'New Agenda' initiative by eight governments from North and South¹³
- the Opinion delivered by the International Court of Justice in summer 1996, in which the judges declared the use of nuclear weapons 'generally...contrary to the rules of international law' and concluded that the nuclear-weapons states had a legal duty to conclude disarmament treaties aimed at securing the complete elimination of nuclear arsenals¹⁴

The German government of the time was remarkably reticent in this debate. It is indeed no easy matter to identify a clear and definitive position for German policy-making, which is characterized by unavoidable contradictions:

- between cautious adherence to a nuclear back-up policy and the moral repugnance against weapons of mass destruction that has come to establish itself not only amongst the population but also amongst broad sections of the political élite
- between linkage to NATO strategy, with its continuing nuclear substratum, and the clear obligation to total nuclear disarmament set out in Article VI of the Non-Proliferation Treaty
- between the special interests of a major non-nuclear-weapons state and the latter's close relationship with its nuclear-armed partners

The contradictions in policy-making thus reflect dilemmas resulting from Germany's political situation. In coping with these dilemmas, German policy-making has gone through a number of different stages and has identified specific interests. As far as the present phase - the post-Cold War era - is concerned, it has yet to find a durable solution.

3. Stages in the German Nuclear Debate

3.1 Security Aspects

German abstinence in regard to nuclear weapons was initially a matter of compulsion. The renunciation of the right to produce nuclear weapons within Germany, as laid down in the Paris protocol to the Treaty of Brussels (1954), was believed to be no more than temporary

11 Harald Müller/Katja Frank/Alexander Kelle/Sylvia Meier/Annette Schaper, *Nukleare Abrüstung - Mit welcher Perspektive? Der internationale Diskurs über die nukleare Rüstungskontrolle und die Vision einer kernwaffenfreien Welt* (HSFK: HSKF-Standpunkt 3; Frankfurt/M., Aug. 1997).

12 *Report of the Canberra Commission on the Elimination of Nuclear Weapons* (Commonwealth of Australia: Canberra, Aug. 1996).

13 Joint Ministerial Declaration: Towards a Nuclear-Weapons-Free World: The Need for a New Agenda, June 1998, printed in *PPNN Newsbrief*, 43 (1998), 3: pp. 30-1.

14 Harald Müller, 'Das Gutachten des IGH - ein Beitrag zum nuklearen Abrüstungsdiskurs', *Die Friedenswarte*, 71 (1996), 3: pp. 261-72.

by the German leadership. Adenauer was convinced that, after the full rehabilitation of the Federal Republic, it too would possess, and be entitled to possess, nuclear weapons, as the legitimate insignia of a respectable medium-sized power.¹⁵ As defence minister, Franz-Josef Strauß sought to speed up this process. Not only did he push ahead - within the framework of the strategic planning of the Atlantic Alliance - with measures to equip the Federal Army with nuclear-capable carrier-weapons, which, if it came to the crunch, were to be armed with American nuclear warheads; in 1957, without the knowledge of the USA, he agreed a shortlived co-operation-project for the joint development of nuclear weapons with his French and Italian colleagues. As actual production was to take place in France, the letter, if not the actual purpose, of the Paris protocol was satisfied. The project came to an abrupt end when de Gaulle assumed power.¹⁶ Never again did the German ambition to join the ranks of the atomic powers express itself in such a fully developed practical form; however, there were particular research-projects, going on until well into the 1960s, which lead one to suspect that Germany intended to maintain at least the kind of minimum capabilities that could have formed the basis for a nuclear-weapons programme.¹⁷

German policy-making confined itself to more modest forms of nuclear involvement, namely:

- the possession, by the Federal Army, of nuclear-weapons-capable carriers which, in case of war and following a decision on use by NATO and the American president, would carry American warheads to the chosen target
- participation in decision-making about doctrine, target-setting, and procurement within the framework of NATO's Nuclear Planning Group, established in 1967¹⁸

Both forms of involvement continue to this day - although the German military's nuclear role has shrunk to the possession of a single squadron of Tornados, and although the NPG has lost its key position in the alliance now that NATO's nuclear weapons play only a residual role (see below). During the 1980s, Germany contributed actively to this relative decline in importance of nuclear weapons: after 1983, it pressed its reluctant American ally to resume - and successfully conclude - the negotiations on medium-range missiles; it also determined, though not without a degree of internal debate, to sacrifice the Pershing Ia, militarily the most effective carrier-weapon owned by the German military, on the altar of the INF Treaty.¹⁹ In addition - and this was immeasurably more commendable - it managed, almost singlehandedly, to block NATO's 'second modernization', the replacement of the Lance short-range missile, against the wishes of the Americans and

15 Hans-Peter Schwarz, 'Adenauer und die Kernwaffen', *Vierteljahreshefte für Zeitgeschichte*, 37 (1989), 4: pp. 567-94.

16 Franz-Josef Strauß, *Die Erinnerungen* (Berlin, 1989), pp. 311-19.

17 As indicated in unpublished research by Annette Schaper; information passed to the author by word of mouth.

18 Catherine M. Kelleher, *Germany and the Politics of Nuclear Weapons* (New York, 1995); Dieter Mahnke, *Nukleare Mitwirkung. Die Bundesrepublik Deutschland in der Atlantischen Allianz 1954-1970* (Berlin, 1972).

19 Thomas Risse-Kappen, *Zero Option* (Boulder: Westview, 1988).

British. In so doing, in that *annus mirabilis* of 1989 it kept the door open for that political dynamic in Europe which ultimately put an end to the dynamics of East–West conflict and made German reunification possible. Thus, in the past, wherever Germany has considered there were massive political or security interests at stake, it has vigorously pursued processes of arms control and disarmament.²⁰

That said, both before and after the fall of the Wall, the federal government held fast to the view that NATO's nuclear posture in general, and also the deployment of a number of nuclear weapons - albeit comparatively small - on German territory, as a means of 'coupling' the USA's strategic arsenal to European security-interests, was indispensable. In view of the confusion in the world situation - a confusion that had actually increased - nuclear deterrence, so Germany argued, continued, for security reasons, to be indispensable as an insurance against residual risk - though the exact nature of this risk could not as yet be defined.²¹

As a result not only of its ties to NATO, but also of its close relationship with France, Germany tended on the whole to be cautious in its pronouncements in the arena of international disarmament diplomacy. During the general uproar over the French nuclear tests in 1995–6, for example, the federal government deliberately declined to criticize Paris in public. However, that did not prevent it from articulating its concerns behind closed doors and - more importantly - working on France and the United States to get them to agree to a genuine test-ban - one without artificially high thresholds for permitted nuclear explosions. The decision of both allies to agree to a 'zero threshold' - arrived at in August 1996, to the amazement of many observers - was due in no small part to discreet but persistent German pressure.

In the present debate about nuclear disarmament, Germany has tended to be cautious in expressing its opinions and has positioned itself on the side of the forces of conservatism. The previous federal government, through its Commissioner for Disarmament, once again pledged itself in principle to nuclear disarmament, and for the first time named concrete conditions for realizing this objective. These were: verifiability of the total abolition of nuclear weapons; elimination of nuclear-weapons-capable material; and guaranteed security against (illegally retained or newly produced) nuclear, biological, and chemical weapons.²² However, there was no basis within actual security policy from which Germany might purposefully and actively seek to bring about this state of affairs. Support was given to ongoing (and, in Western terms, uncontroversial) arms-control and disarmament projects (START II, inclusion of tactical nuclear weapons, ban on production of fissile material for use in explosions). By contrast, more far-reaching demands, or demands liable to undermine NATO's doctrine and posture (no first use, nuclear-weapons-free central Europe, ban on deployment on the territory of non-nuclear-weapons states) were rejected

20 Hans-Dietrich Genscher, *Erinnerungen* (Berling: Siedler-Verlag, 1995), ch. 15.

21 German Ministry of Defence, White Paper 1994: *Weißbuch zur Sicherheit der Bundesrepublik Deutschland und zur Lage und Zukunft der Bundeswehr* (Bonn, 1994), p. 52.

22 Dr Rüdiger Hartmann, 'Ziele und Prioritäten der nuklearen Nichtverbreitungs- und Rüstungskontrollpolitik Deutschlands am Ende der Neunziger Jahre', talk given before the DGAP work-group 'Nukleare Nichtverbreitungspolitik' (Bonn, 10 Oct. 1997).

by the old federal government. Symptomatic of Germany's position was its vain pronouncement, delivered (under no real compulsion) before the International Court of Justice in the Hague in 1995, against the right of the court even to address the question of the legality of the possession and use of nuclear weapons.

3.2 Economic Aspects

The ambivalence described here resulted from the two-fold desire to continue to cash in on the gains in security supposedly afforded by extended deterrence and to take account of close allies, but at the same time to cushion any disadvantageous consequences which the alliance's nuclear arsenal might have for German political and security interests. But there is another important aspect of German nuclear policy which, by contrast, cannot be understood in terms of security interests. I refer to the aspirations of a medium-sized non-nuclear-weapons state, which, in addition, owns an efficient nuclear industry covering the full production-range, from energy sector to specialized nuclear equipment. Because of these factors, German policy began increasingly to take the line of fending off any disadvantages that might arise out of this position, and to keep any possible advantages to the nuclear-weapons states to a minimum, or do away with them completely. This involved not only political privileges, but also possible competitive advantages that might be detrimental to the German nuclear industry. This explains the fierce struggle for an NPT verification system that would put the least possible strain on the industry subject to inspection. Although in 1968 it had not proved possible to push through similar constraints for the nuclear-weapons states, in the negotiations on the reform of the verification system between 1995 and 1997, German diplomacy did manage to ensure that the principle of the universal application of the new measures was included in the preamble to the new document (the protocol). Since then, four nuclear-weapons states (France, Britain, the USA, and Russia) have declared themselves willing to implement part of these measures - albeit to differing degrees.

These same factors prompted mammoth efforts against any kind of restriction on the use of nuclear technology. This included, in particular, the use of technologies which, in the view of many observers (especially Americans), present a proliferation problem once they are put to use in non-nuclear-weapons states. The technologies in question are uranium enrichment and the separation of plutonium during the reprocessing of reactor fuel. In the negotiations on the NPT, Germany exerted a lasting influence on the formulation of Article IV, which makes the peaceful use of nuclear energy a right of every party to the treaty. The article could then be held up as a shield against the later attempts of the USA (from 1974) to talk its allies out of the closed fuel cycle. At the same time, the federal government, in concert with industry and certain sections of scientific research, made great efforts to keep the burdens which the verification system imposed on the nuclear industry to a minimum, particularly in the sensitive parts of the fuel cycle, where the frequency and intensity of inspection are, by nature, at their greatest. This led, for example, to years of dispute over

the IAEA measures that needed to be applied in the old MOX fuel-production plant in Hanau.²³

3.3 Possible Changes under the New German Government

The new German government has to some extent set new directions. As regards the stance on nuclear disarmament, it has given signs of a cautious willingness to direct some fundamental questions at certain taboo elements of the ideology of security and deterrence - for example, asking whether NATO's prevailing nuclear doctrine is still in keeping with the times. However, the edge is taken off this willingness by the fact that this 'left-wing' government is regarded by its allies with particular mistrust, and is therefore under a special obligation to prove its loyalty and fitness as a member of the alliance. This means there are limits to any all-out enthusiasm for reform in nuclear policy - though this does not necessarily preclude the possibility of a review in the next few years, once the government has earned its credentials. Despite all this, the Coalition Agreement did advocate a doctrine of no-first-use of nuclear weapons for NATO; it declared itself in favour of reducing the operational readiness of nuclear weapons currently deployed (de-alerting); and it reaffirmed the goal of eliminating all weapons of mass destruction.

Much more movement is observable in those aspects of policy-making in which defence of the interests of the German nuclear industry are involved. It was not to be expected that a government resolved to end the peaceful use of nuclear energy at home would, when confronted with conflicts of interest between industry and non-proliferation, follow the tradition of defending the interests of its own industry. The first venture was aimed at putting a premature end to the use of plutonium-rich mixed-oxide fuel in German reactors and to the reprocessing of German spent reactor-fuel in France and Britain. These efforts taught the government - particularly the environment minister - that the diplomatic dance-floor can be a very slippery place: not only was it impossible to withdraw unscathed from existing agreements; relations with France and Britain were put under much more strain than the Green foreign minister would have liked. As a result, the only course of action was orderly retreat.

On the verification issue too, the industry cannot count on the government's being prepared to fight off every new obligation. It is much more likely that, when it comes to the now-overdue implementation of the NPT protocol, Germany will number amongst those who will try to ensure the '93 plus 2' concept is implemented swiftly and with maximum effectiveness. In the case of nuclear export controls, the government is much more likely to direct its energies at getting the consistently higher German standards

23 Erwin Häckel, *Die Bundesrepublik Deutschland und der Atomwaffensperrvertrag: Rückblick und Ausblick* (Europa-Union Verlag: Bonn, 1989); Harald Müller/Wolfgang Kötter, *Germany and the Bomb. Nuclear Policies in the Two German States, Nonproliferation Commitments* (HSFK: PRIF Reports, 14; Frankfurt/M., 1990); Harald Müller, 'Strukturfragen der deutschen Nichtverbreitungspolitik', in: Constanze Eisenbart/Dieter von Ehrenstein (eds.), *Nichtverbreitung von Kernwaffen - Krise eines Konzepts* (FEST: Texte und Materialien, ser. 8, no. 30; Heidelberg, 1990), pp. 521-56.

accepted by its partners, as part of the European regulation on the control of dual-use goods, than to allow its own rules to be watered down.

Of course, it is clear that, despite the tension between the slogans of Red-Green energy policy and the interests of the industry, there may well be occasional convergence here. This will be the case when the latter interests coincide with the political interest which non-nuclear-weapons Germany has in eliminating the discrimination between nuclear-weapons and non-nuclear-weapons states. In addition, it should be remembered that international co-operation on the civilian use of nuclear technology is a legal obligation deriving from Article IV of the Non-Proliferation Treaty (a fact that has led to its being repeatedly criticized by opponents of nuclear energy). What form this co-operation takes, in what areas it occurs, and with whom it is undertaken are, of course, matters decided by politics.

4. German Interests and Nuclear-Weapons Policy

4.1 On the Impossibility of the 'German Option'

The very basic question of whether, given the new overall conditions, Germany should rethink its renunciation of nuclear weapons has a very odd circumstance attaching to it, namely that it tends to be posed mostly outside Germany and almost never within the German debate. Amongst the critics of German *Machtvergessenheit* - or obliviousness to power - only Arnulf Baring has ventured to tinker with this taboo, albeit without himself expressing a definitive opinion on it.²⁴ This reluctance to enter into discussion is not in any way artificial. In fact it is the expression of a powerful conviction, deeply rooted both in the political culture of Germany - even after reunification - and in an equally strong emotional repugnance to nuclear weapons, as expressed particularly forcefully in the 1980s protests against the deployment of medium-range missiles. The consensus against the 'German option' is thus grounded first and foremost in an unambiguous stance by the German public which politicians, even if they wanted to, could only go against at the risk of damaging their own political futures. Any German government that sought to effect a change in the country's nuclear status would risk public protest ranging all the way up to civil-war-style conditions compared to which the events surrounding the shifting of Castor containers would probably appear trivial.²⁵

The second cornerstone on which the German renunciation of nuclear weapons rests is of a legal nature. In 1954, in the Paris protocols to the Treaty of Brussels, which provided for

24 Arnulf Baring, *Deutschland, was nun? Ein Gespräch mit Dirk Rumberg und Wolf Jobst Siedler* (Berlin: Siedler Verlag, 1991), pp. 209–10. See also Thomas Enders/Holger H. Meyer/Michael Rühle, 'The New Germany and Nuclear Weapons', in: Patric J. Garrity/Steven A. Maraanen (eds.), *Nuclear Weapons in the Changing World: perspectives from Europe, Asia and North America* (New York: Plenum, 1992), pp. 124–38.

25 Foreign observers, particularly Americans, regularly underestimate just how deeply Germany's non-nuclear status is rooted in German political culture. This has recently been done yet again by David S. Yost, *The US and Nuclear Deterrence in Europe* (IISS: Adelphi paper 326; London, 1999), pp. 25–6.

the creation of the Western European Union, Germany, as is well known, renounced the right to produce nuclear weapons on its own territory. Again, in the Non-Proliferation Treaty, it made a general pledge of renunciation, though at the outset this was subject to the twenty-five-year term stipulated for the treaty. The fact that in 1995 German diplomacy was one of the keenest advocates of an indefinite and unconditional extension of the treaty is striking proof of the change that has occurred in the German stance on this question, as outlined above. Since then, Germany has yet again legally undertaken to forgo all weapons of mass destruction - in Article 3 I, 1 of the Two-plus-Four Treaty. The context in which this obligation was entered into - namely, as a reciprocal gesture for the restoration of all the reserve rights still held by the Allies in Germany - makes it more significant than the previous pledges, given that it ultimately makes German sovereignty conditional on the country's being free of nuclear weapons. To put it another way: should Germany break this pledge, the Allies could reclaim their reserve rights.

The third cornerstone on which the Germany renunciation of nuclear weapons rests is political, and forms the basis of the multifarious legal obligations. I refer to the conviction, shared both by Germany and by its neighbours and allies, that European stability is best served by a Germany whose military power is restricted. The fact that an American scholar - John Mearsheimer - has a different viewpoint on this, and has advocated targeted proliferation involving Germany (and the Ukraine), merely indicates his ignorance of the European situation, not any strategic perspicacity on his part.²⁶ A militarily dominant Germany (for which nuclear weapons would be a prerequisite) would destroy the internal Western balance - one of the pillars of the co-operative institutions of the West - and the balance of power in Europe as a whole. Contrary to the expectations of many forecasters who are unable to comprehend the transformation that has taken place in the fundamental structures of the European world of states and societal world, issues about alliances, balance of power, and see-saw politics as they posed themselves in the late nineteenth and early twentieth centuries *do not* figure in the current debate. That this is so is due in no small measure to the judicious self-restraint shown by German democracy. Only in this way is it possible to maintain the unparalleled state of security that Germany has achieved for the first time in its history - the state of being surrounded by friends and partners who, rather than devising alliances against the 'German giant', are eager to find ways - or better ways - of co-operating with him. From this point of view, after a perilous and extremely bloody century-long quest for stability as a geostrategically median state, the renunciation of nuclear weapons is, paradoxically, a crucial precondition of Germany's security and well-being, and thus at the very core of German national interest.

4.2 The Obsolescence of the NATO Doctrine

The strategic basis for the German renunciation of nuclear weapons is now stronger than ever. There is no immediately discernible security factor that could cause the country to rethink its position. The strong interest which Germany previously had in a nuclear

26 John J. Mearsheimer, 'Back to the Future. Instability in Europe after the Cold War', *International Security*, 15 (1990), 1: pp. 5-56.

guarantee - a guarantee which it believed could only be assured by a mass deployment of tactical nuclear weapons - was prompted by the real or supposed superiority and offensive capability of the Warsaw Pact units. Only nuclear deterrence, so previous federal governments believed, were of any avail against a conventional offensive threat of this size. The NATO democracies were not considered either able or willing to raise the funds needed to counter a threat of this kind with equivalent means. Nor was a purely conventional defence strategy seen as desirable, since any intention by the opposing side to go to war could not be met with same threat of reprisal as that provided by nuclear weapons. Particularly after the experiences of the Second World War, Germany wanted at all costs to avoid the risk of a conventional war, given that this would be played out largely on German soil. Nuclear weapons, so it was reckoned, could be relied upon to deter even an expansionist leadership such as that of the Soviet Union from waging war. Conventional war would thus be prevented along with nuclear war.²⁷

It is worth recalling this strategic train of thought, since it highlights how completely the factors upon which it was based have disappeared. There is no longer any military threat in Europe. As an alliance of democratic states, NATO is structurally incapable of waging a war of conquest. Outside of a war of defence, the kind of intervention made in Kosovo is the most the Western alliance is able to summon up in the way of military activity. Russia has no interest in westward expansion; it has more than enough to do coping with its own crisis-ridden development. Its armed forces are no longer capable of conducting coherent operations. Whilst the political landscape thus looks very peaceful, the purely military considerations are, as usual, more ambivalent. For the Baltic states, the quantitatively far superior Russian army on their borders represent a dormant threat. From the Russian point of view, the breathtaking all-round superiority of the Western alliance - numerically and technologically, from the point of view both of doctrine and logistics and of training and morale - represents a worrying imbalance. From the NATO standpoint, meanwhile, this superiority affords an unprecedented degree of military security - to which there is only one serious threat: that of the collapse of the Russian armed forces and the concomitant risk of an unintentional or unauthorized nuclear launch, or of a paranoid reaction to a presumed but non-existent Western attack, brought about by the catastrophic state of the Russian early-warning system.²⁸ The fact that the USA has decided to share reconnaissance data with Russia shows how seriously this threat is taken.

Germany has a genuine interest in seeing this threat removed. However, it is faced with the difficulty that Russia believes its own security, and also its status as a world power, can now only be guaranteed by nuclear weapons. Its conventional forces are inferior. There is no prospect of its eliminating America's (and thus also NATO's) lead in modern military

27 David N. Schwartz, *NATO's Nuclear Dilemmas* (Washington: Brookings, 1983); Klaus-Peter Stratmann, *NATO-Strategien in der Krise? Militärische Optionen von NATO und Warschauer Pakt in Mitteleuropa* (Baden-Baden: Nomos, 1981).

28 William Potter, 'Before the Deluge? Assessing the Threat of Nuclear Leakage from the Post-Soviet States', *Arms Control Today*, 25 (Oct. 1995), pp. 9-16; Graham Allison *et al.*, *Avoiding Nuclear Anarchy. Containing the Threat of Loose Russian Nuclear Weapons and Fissile Material* (Cambridge, Mass./London, 1996); David Hoffmann, 'Amid Economic Crisis, Russia Lets Its Guard Down at Nuclear Facilities', *International Herald Tribune*, 28-9 Nov. 1998, p. 2.

technology in the foreseeable future. In these circumstances, the Russian military leadership believes it must rely on a type of nuclear deterrence which is very similar to NATO's old 'flexible response' doctrine but which, like the latter, ends up being extremely *inflexible*, since nuclear first-use will be the early response to almost any kind of military aggression with which Moscow may find itself confronted. As a result, not only is the role of nuclear weapons in general enhanced; just as in the old NATO, tactical nuclear weapons, as well as serving as a 'pre-strategic warning' or as a 'link' between the 'first shot' and nuclear Armageddon, are seen as the appropriate tactical response to a whole series of conventional and chemical/biological challenges, beginning with concentrations of superior conventional forces.²⁹

This circumstance is particularly unfortunate in that tactical nuclear weapons by their nature (and, as far as the older ones are concerned, by their design) fall below the security standards of modern strategic nuclear weapons. Furthermore, they are, for the most part, more mobile and easier to handle. As a result, they are more vulnerable to theft, and they are more susceptible to accidental or unauthorized use, and to use in nuclear terrorism. This makes Germany's interest in ensuring these weapons are cut back and controlled that much greater.

At the beginning of the 1990s, this process seemed to be set fair, after President Gorbachev had taken up an initiative of President Bush's and earmarked a large proportion of Russian nuclear weapons for dismantling. The US fulfilled this undertaking. Russia too dismantled thousands of warheads, but it started from a much higher level. According to estimates by Russian experts, in 1991 the tactical nuclear arsenal comprised between 17,100 and 21,700 warheads. By spring 1994, only about 8,400 of these remained. By contrast, the American stocks number about 1,800 - only 150 of which are reported to be stored in Europe.³⁰

It is in Germany's interest that Russian strategic nuclear weapons be drastically cut back and have their operational readiness reduced (de-alerting). The tactical arsenal too should be considerably reduced, if possible to zero. At all events, these weapons should be stored centrally, far away from the alliance's borders, and should be kept under a system of control that can be proven to be safe.³¹ Because of the state of Russian security and finances, however, this is not something that can be secured for free. NATO - and above all the United States - must make reciprocal gestures of a kind that will make further cut-backs to the last remaining instrument of national military might both bearable and logical. Such gestures include:

- withdrawal of nuclear weapons stored in the non-nuclear-weapons states of Europe

29 Yuri Fyodorov, 'Prospects and Conflicts of Russian Nuclear Deterrence', *Yaderni Kontrol*, 1 (spring 1996), pp. 12-15; Vladimir Belous, 'Tactical Nuclear Weapons in the New Geopolitical Situation', *ibid.* pp. 9-12.

30 William C. Potter, 'Update on Developments Regarding Tactical Nuclear Weapons Disarmament', mimeo, June 1999. Potter bases his account on: data provided by the Russian disarmament expert and Duma representative Alexei Arbatov; a statement by the director of the disarmament section of the Russian foreign ministry, Grigor Berdennikov; and estimates by the nuclear expert Anatoli Diakov.

31 Nikolai Sokov, 'Tactical Nuclear Weapons Elimination: Next Steps for Arms Control', *Nonproliferation Review*, 4 (1997), 2: pp. 17-27.

- adoption of a doctrine of no-first-use - which would also be rendered more credible by the kind of withdrawal just mentioned
- legal assurances that no nuclear weapons will be deployed in member states as long as there is no military threat, i.e. the CFE treaty and Paris Charter are respected
- US readiness to agree to an upper limit of 1,500 warheads in the case of strategic nuclear weapons

These measures clearly run counter to prevailing NATO doctrine. As far as this is concerned, it was made clear above that the situation of threat to which traditional NATO doctrine was geared no longer applies. At present, the adherence to the doctrine as it obtained in the Cold War serves no other purpose than to legitimize ownership of nuclear weapons by the three Western states. What is more, NATO's attitude is contributing to the risk to the Non-Proliferation Treaty - a risk which one would currently have to describe as acute.

The justification for retaining nuclear weapons which NATO gives in its new Strategic Concept is as follows: 'The fundamental purpose of the nuclear forces of the Allies is political: to preserve peace and prevent coercion and any kind of war. They will continue to fulfil an essential role by ensuring uncertainty in the mind of any aggressor about the nature of the Allies' response to military aggression. They demonstrate that aggression of any kind is not a rational option.'³²

This is a perfect justification for the proliferation of nuclear weapons: if the strongest alliance in the world needs a nuclear arsenal for these reasons, why should weaker states in much more threatening situations deny themselves these weapons?

NATO reserves the right to a first use of nuclear weapons against threats which it does not define precisely. In the new Strategic Concept it also claims the right to use military force outside alliance territory - and, in extreme cases, to do so even without a UN mandate. From the point of view of non-members, this creates the possibility of ending up in a conflict with an opponent who is ready to use nuclear weapons if he thinks this is right. This possibility is envisaged above all by countries where there are internal conflicts. No doubt such a view drastically overestimates the alliance's readiness to engage in conflict, and the Strategic Concept itself describes the possibility of a use of nuclear weapons as 'extremely remote';³³ but that is not the crucial point here. What matters is that in formulating its Strategic Concept, NATO seems not to have given any thought to the effect its phraseology would have on outside parties in terms of the overall goal of non-proliferation. When the Chinese government claims that, following the Kosovo operation, a worldwide proliferation of nuclear weapons must now be expected, since smaller countries will believe this is the only way in which they can protect themselves against a

32 'The Alliance's Strategic Concept - Approved by the Heads of State and Government Participating in the Meeting of the North Atlantic Council in Washington D.C., 23 and 24 April 1999', para. p. 62.

33 Ibid., para. p. 64.

superior NATO, this may be an exaggeration; but the thought is not entirely absurd, and this argument has been looked on sympathetically by other members of the NPT.³⁴

Given that the Non-Proliferation Treaty is one of the major framework conditions governing German and European security, any threat to it must, as far as possible, be removed. Germany therefore has good reason to press for a change to NATO doctrine. One can only hope that the process of reflection proposed by the NATO summit in Washington and due to get under way in December will address this issue.³⁵ It must be said, however, that this is not the intention of the Western nuclear-weapons states.

4.3 On the Improbability of the 'European Option'

One of Germany's main reservations when it acceded to the Non-Proliferation Treaty concerned the maintenance of the 'European option' - that is to say, the possibility that a federal Europe might 'inherit' the nuclear weapons belonging to the nuclear-weapons states that formed part of it. In terms of international law, joint control and ownership by European non-nuclear-weapons states is only possible if they relinquish their statehood, in other words, if they transfer their sovereignty over foreign and security policy to a pan-European union fully empowered to decide issues of war and peace. Joint control and ownership below the federal level would constitute a breach of the obligations which the Non-Proliferation Treaty imposes both on the non-nuclear-weapons states (Art. II) and on the nuclear-weapons states (Art. I).³⁶

During the period of the East-West conflict, the 'European option' slumbered away peacefully, but in 1995 it was rudely awakened when the French prime minister of the time, Alain Juppé, proposed a form of 'extended deterrence' to his partners - by which he meant expanding the zone of deterrence provided by French nuclear weapons to cover the whole of the territory of the European Union - and offered talks along these lines. The response ranged from lukewarm to disapproving. Against the background of the international disquiet at the French nuclear tests, Juppé's partners did not want to compromise themselves by coming along at this very juncture and providing a let-out justification for the continued existence and development of the French arsenal. But lurking behind the offer - in addition to the hope that there would be a public-relations effect of this kind - were some quite genuine French ideas about 'Europeanizing' the Force de Frappe to a greater extent.

34 Rebecca Johnson, 'The NPT Third Prepcom: What Happened and How', *Disarmament Diplomacy*, (May 1999), p. 16.

35 'Washington Summit Communiqué - Issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council in Washington, D.C. on 24 April 1999', para. p. 32.

36 Harald Müller, 'Kernwaffen und die Europäische Union: Überlegungen zum Verhältnis der „Europäischen Option“ zum nuklearen Nichtverbreitungsregime', in: Hans Blix *et al.* (eds.), *Probleme der nuklearen Nichtverbreitungspolitik. Beiträge zur internationalen Diskussion* (Forschungsinstitut der Deutschen Gesellschaft für auswärtige Politik: Arbeitspapiere zur internationalen Politik, 83; Bonn, 1994), pp. 19-40.

Of course, one needs to be hard-headed about the limits to this offer. France (and, incidentally, Britain) has no thought of giving up or sharing ownership of its nuclear weapons or of its final right of decision over strategy, doctrine, or the actual use of such weapons. What has begun to emerge, however, is an increased willingness not to treat nuclear weapons as an exclusively national matter, and to accept the idea of a graduated international responsibility which primarily affects the European partners.³⁷ To this extent, the French offer may be regarded as positive. Consultations make very good sense, provided it is clear from the outset that the content of such talks may not exclude anything - in other words, that issues of arms control and disarmament must appear on an equal footing on the agenda. It would make no sense to limit the content of the talks in such a way that the whole process did indeed have no more than a justificatory character. First place on the agenda could and should be occupied by the two European states' first-use doctrine, followed immediately by the need for more transparency and the legal tying-in of the two states into the START process, including stipulation of verified upper limits for their stocks of nuclear weapons.

In terms of security, what has just been said about NATO also applies to the 'European option': there is no discernible threat against which nuclear weapons would have to be held up as a counter. This means that, by clinging to their nuclear-weapons status, France and Britain are setting up a pattern of, and incentive to, proliferation for third states - and in particular for those that have more security problems than do the essentially unthreatened medium-sized powers of Western Europe. The idea that Germany might have any interest in the 'European option' is no longer really tenable. The most that advocates of nuclear weapons could cite as a function for the European arsenals is that of a form of back-up insurance against the dual misfortune of renewed imperialism in Moscow and an isolationist withdrawal from Europe by the USA. But of course this very scenario militates in favour of resolute steps towards disarmament, because the only remaining threat would then lie in the Russian nuclear arsenals: Russia will, for the foreseeable future, remain too weak for a conventional attack; and, because of the radical changes to the geostrategic situation, Europe would be able to assure its own defensive capability.

One is, in any case, also justified in asking whether, in the European nuclear-weapons states, the grounds for disarmament and the grounds for the 'European option' are not ultimately identical. In other words: if Britain and France were ready to renounce national control and pool their nuclear weapons within a European federal state, they would also be willing to get rid of their nuclear weapons completely.

4.4 Non-Proliferation and the Acute Risk to the NPT

Non-proliferation and the NPT have already played a prominent part in the arguments presented up to now. They are a major framework condition for the realization of German economic and security interests.

³⁷ See Bruon Tertrais, *Nuclear Policies in Europe* (IISS, Adelphi Paper 327; London, 1999), ch. 4.

Any country which, like Germany, has decided, after careful consideration, to forgo nuclear weapons, has an interest in ensuring that its status is not adversely affected by this decision. For this reason alone, it must work to ensure that as many states as possible adopt the same stance - otherwise, it will be almost impossible to deal with the problem of discrimination. This in itself means that German renunciation of nuclear weapons and the German interest in global non-proliferation are two sides of the same coin.

In addition, however, prevailing opinion in the international academic and political debate assumes that there is no way of reliably universalizing nuclear deterrence as a security system.³⁸ On the contrary, depending on the specific conditions underlying the disputes into which nuclear weapons are introduced, such weapons can aggravate the conflict or lead to escalation; nor can their actual use be excluded - with horrendous consequences. Paradoxically, nuclear proliferation has less impact on the parameters of the international distribution of power than on the parameters of global security.³⁹ The United States would still be a superpower even if it did away with nuclear weapons. The nuclear capabilities of North Korea and Pakistan cannot secure these countries a higher status; and Japan and Germany have become influential by virtue not of their nuclear but of their economic power. On the other hand, international security is seriously compromised by the danger of nuclear wars, wherever they occur. Even if such conflicts were by nature regional in kind - centered in South Asia, for example - their impact on security would be global. The proliferation of nuclear weapons increases the risk of conflicts being played out by nuclear means. Hence, for genuine reasons of security, Germany necessarily has an interest in non-proliferation.⁴⁰

Besides aggravating conflicts and, in extreme cases, perhaps actually leading to wars, proliferation damages the co-operative links on which the well-being of Germany as a trading nation depends. The scenario of a nuclear arms-race between two or more regional powers in the Persian Gulf illustrates this point. The acute risk to energy supplies that would result from such a development would cause damage to the Federal Republic, with its high dependency on oil imports. In general, a trading nation has an interest in its environment being stable and predictable. Instability raises the costs of transactions - insurance premiums, for example - and is therefore economically undesirable. The Non-Proliferation Treaty may be regarded as underpinning these stability-related interests.

The treaty rests on a network of mutual obligations between nuclear-weapons and non-nuclear-weapons states, between those who possess nuclear technology and the 'have-nots' - particularly the developing countries. The obligations which it imposes on the non-nuclear states are unquestionably more far-reaching. These states not only forgo the most powerful weapons of the age; they also submit themselves to extensive verification -

38 Scott D. Sagan/Kenneth N. Waltz, *The Spread of Nuclear Weapons: a Debate* (New York: Norton, 1995).

39 Harald Müller, 'Neither Hype nor Complacency: WMD Proliferation after the Cold War', *Nonproliferation Review*, 4 (1997), 2: pp. 62-71.

40 On this, I concur fully with Joachim Krause: *Strukturwandel der Nichtverbreitungspolitik. Die Verbreitung von Massenvernichtungswaffen und die weltpolitische Transformation* (Munich: Oldenbourg, 1998), ch. VI.

further tightened up in 1992 and 1997 - of their civilian nuclear industry and (now also) of the dual-use areas linked to this.⁴¹

In return, the nuclear-weapons states have assumed certain obligations in regard to disarmament - though these are vaguely formulated in the text of the treaty (with no timetable or clearly stated binding interim steps) and, by being linked to 'general and complete disarmament', are postponed, in almost utopian fashion, to some undefined future date. The pressure which the non-nuclear-weapons states were able to exert at the 1995 Review Conference led to a marked tightening-up of these obligations. Driven by their urgent desire to place the NPT on a permanent footing, the five nuclear-weapons states agreed a list of 'principles and objectives' which, amongst other things, prescribed two practical steps (a ban on tests, and negotiations on the legally binding cessation of production of fissile materials for weapons purposes), called for systematic and progressive steps towards nuclear disarmament, and defined general disarmament and nuclear disarmament as parallel processes.⁴² A year later, the International Court of Justice issued an Opinion in which it ruled that the nuclear-weapons states had a duty to enter into negotiations on the agreement of legal instruments for nuclear disarmament - and to do so without the precondition of 'general and complete disarmament'.

The nuclear-weapons states have shown themselves extremely stubborn as far as implementing these obligations are concerned. Their conduct at the preparatory committee for the next NPT Review Conference indicates that they intend largely to ignore the 'principles and objectives'. The USA in particular has excelled itself in its hair-splitting pronouncements about the 'principles and objectives' being a secondary document, and about the fact that the review must concern itself more or less exclusively with the NPT. The USA and Russia have even refused, so far, to set up a committee at the Geneva Disarmament Conference to *discuss* - not even to negotiate about - nuclear disarmament.⁴³

The behaviour of the nuclear-weapons states, notably that of the USA, has caused something worse than uneasiness in a number of non-nuclear weapons countries - not all of whom belong to the non-aligned movement. There is a growing feeling of having somehow been cheated over the indefinite extension of the treaty. A country such as South Africa, which, in 1995, acted as a crucial bridge-builder between 'North' and 'South', is now on course for a confrontation. The Arab countries have an added ground for complaint: they are confronted with a nuclear-armed Israel; for this reason, in 1995 they pushed through a resolution requiring the depositary states - the USA, Britain, and Russia - to make special efforts to ensure the NPT was universalized in this area or to create a nuclear-weapon-free zone there. Instead, in 1997 and 1998 the USA blocked all discussion of the Middle East resolution in the preparatory process for the Review Conference; and, on the fringes of the Wye negotiations, it concluded an agreement with Israel which places it under an obligation to bolster the latter's capacity for defence, but also its capacity for

41 Susanna von Moyland, 'A New Era in Safeguards: Assessing the IAEA Model Protocol', *Disarmament Diplomacy*, 16 (June 1997), pp. 5-11.

42 Harald Müller/David Fischer, *United Divided. The Europeans and the NPT Extension Conference* (HSFK: PRIF Report 40; Frankfurt/M., 1995).

43 Rebecca Johnson, 'Geneva Update', *Disarmament Diplomacy*, 29 (Aug.-Sept. 1998), pp. 16-25.

deterrence. The nuclear tests in South Asia were a further ground for a number of Arab states to consider how far this treaty was still serving their interests.

Overall, therefore, the atmosphere amongst the parties to the treaty is worse than ever, and the events in South Asia are in danger of demoralizing the treaty membership. If the negative political trend continues, one cannot exclude the possibility that many will come to regard the treaty with indifference. Some countries could even decide to leave the NPT. The global non-proliferation regime is threatened with erosion, if not with total collapse.⁴⁴

The repair-work must begin immediately. One group of states has already realized this and is endeavouring to build a bridge between North and South. The first product of this process was the 'New Agenda Initiative' of summer 1998, in which the foreign ministers of Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa, and Sweden issued an emphatic call for a nuclear-weapon-free world, at the same time rejecting unrealistic concepts such as an immediate nuclear-weapons convention and instead proposing a series of interim steps, in line with the ideas developed by the Canberra Commission.⁴⁵ The same countries then reformulated this scheme into a draft resolution for the General Assembly of the United Nations. During the work on this resolution in the GA's First Committee, the full extent of the intransigence of the nuclear-weapons states was revealed - with the USA again in the vanguard. Instead of taking the resolution as a restrained and reasonable attempt by the moderate centre of the NPT membership to find a shared basis for further treatment of the disarmament issue - a treatment that would partially fulfil the demands of the non-nuclear-weapon states but still take account of the strategic interests of the nuclear-weapons countries - the Americans, with the guarded support of all the other nuclear-weapons states except China, attacked the text of the resolution with all the power at its command. Allies were placed under huge pressure not to subscribe to the resolution or vote for it. Many observers said they were reminded of Soviet practices in the Warsaw Pact.

From the German point of view, complete nuclear disarmament remains a long-term objective worthy of support. It would eliminate the kind of discrimination currently inherent in the non-proliferation regime, and it would remove the danger of a nuclear war - which will persist so long as there are nuclear weapons. The task then is to work out - as the Canberra Commission and the Eight-Country Initiative have done - interim steps, each of which in itself enhances international security and at the same time paves the way for further, more radical disarmament measures. At present, the following priorities suggest themselves. The ratification of START II must be followed by work on START III, and this should cover all the superpowers' existing warheads, including reserves, and should contain provisions for the supervision of warhead dismantling. An upper limit on tactical nuclear weapons, or perhaps even their complete abolition, could either be made part of START III or be dealt with as a parallel strand of negotiations. The smaller nuclear-weapons states should undertake to stop increasing their stocks, and should declare what stocks they have. This could, logically, form the basis for a nuclear-weapons register,

44 Ead., 'Is the NPT Tottering?', *Bulletin of the Atomic Scientists* (Mar.-Apr. 1999), pp. 16-18.

45 Printed in *PPNN Newsbrief*, 43 (1998), 3: pp. 30-1.

alongside which there could be an inventory of fissile stocks in military use. The Fissile Material Cut-off negotiations which it is hoped will begin shortly will probably only relate to future, not past, production. However, the Geneva Conference on Disarmament will not be able to avoid dealing with existing stocks. An inventory such as has just been suggested would be one possible route here; an undertaking not to reintroduce items deleted from military stocks into the military inventory (the 'irreversibility principle') would be another.⁴⁶

In 2000, the NPT Review Conference should explicitly prescribe some of these steps as a 'working programme' for the period up to 2005, the date of the next follow-up conference, thus subjecting the nuclear-weapons states to the kind of time pressure that proved helpful in the cases of the test ban and the prohibition on production. The Geneva Conference on Disarmament should have a nuclear disarmament discussion committee, so that the obligation of the nuclear-weapons states to render an account of themselves is made unequivocally clear.

4.5 Eliminating Discrimination

Only complete nuclear disarmament will eliminate the discrimination between nuclear-weapons and non-nuclear-weapons states. But even at the height of the nuclear arms build-up, it was always an explicit concern of Germany's to help remove discrimination. Of course, for the present coalition, which has resolved to opt out of nuclear energy, the earlier motive of shielding the nuclear industry from competitive disadvantage is no longer a determining one. However, eliminating discrimination remains important for more fundamental reasons. As a non-nuclear-weapons state, Germany has a status-related interest in seeing that the discrepancies that result from the different states of ownership are of minimal impact politically and are leveled out in the disarmament process. For this to happen, three developments are necessary:

First, the political importance of nuclear weapons must decline further. A precondition for this is that no new roles or functions are 'invented' for them, and that their tasks within the framework of current strategies are kept to a minimum wherever possible. For this too, a change in NATO doctrine is desirable.

Secondly, the negotiating privilege of the nuclear-weapons states should be limited to what is strictly necessary. By a kind of unwritten rule, these states claim a monopoly on defining which topics are negotiable and which are to be regarded as taboo; they then demand unquestioning loyalty from their non-nuclear-armed friends for this 'order of things'. This is no longer acceptable. That non-nuclear-weapons states have genuine interests that differ from those of nuclear-weapons states is a fact that needs to be pressed home - and this requires considerable courage and a robust backbone. Needless to say, the point should not be stretched so far that friendly relations with France, Britain, and the USA are seriously threatened; but this will not happen merely as a result of articulating divergent views on

46 Harald Müller, 'An Incremental Strategy for Nuclear Disarmament: Rationale and Practical Considerations', *PPNN Issue Review*, 12 (Apr. 1998), pp. 1-7.

nuclear issues - the fact of the matter is that nuclear weapons are currently too peripheral to the grand scheme of foreign and security policy for this to happen. Hence, one should not allow oneself to be misled by exaggerated counter-reactions. The nuclear-weapons states can put up with much more than they publicly admit. This became very clear when Germany successfully opposed the second round of modernization in 1989.

Thirdly, nuclear-weapons and non-nuclear-weapons states must be subjected to the same rules and obligations to the extent that this is compatible with the principle of non-proliferation. Of course, an international organization such as the IAEA may not, in the course of verifying nuclear-weapons states, collect and disseminate information that might be of use to non-nuclear-weapons states in developing nuclear weapons. But there are a host of activities that are not thereby precluded. Thus, the whole of the civilian fuel cycle in nuclear-weapons states could be supervised in just the same way as it is in the case of the nuclear 'have-nots'. Similarly, where enrichment or reprocessing plants are to be closed down or limited to strictly civilian use, this should be verified - both these verification activities are necessary concomitants of the endeavour to ban the production of fissile materials for weapons purposes. Such a ban also requires an appropriate set of instruments for uncovering illegal activities, as detailed in the new protocol to the Nuclear Non-Proliferation Treaty. In other words, in case of doubt, the industries that supply the nuclear industry should be subjected to the same notification requirements and the same obligations to submit themselves to inspection as apply to non-nuclear-weapons states. The sole exceptions continue to be warhead assembly and disassembly, and installations that carry out permitted tests necessary to check the safety and reliability of warheads.⁴⁷

4.6 The German Concern with Law in relation to the Inhumanity of Nuclear Weapons

Important consequences for Germany's stance on nuclear weapons also flow from the country's interest in extending and strengthening the validity of international law. Nuclear weapons and strategy do not operate in a legal vacuum: they are subject to the rules of international law or, more precisely, international humanitarian law (the law of war), which universally proscribes inhumane weapons. The criteria for 'inhumanity' are: non-differentiation between combatants and civilians; particularly horrific effects from weapons; and injury to casualties which, in terms of gravity and duration, goes beyond the military purpose which the use of the weapons was intended to achieve. Chemical and biological weapons, incendiary weapons, dum-dum bullets, and, recently, anti-personnel mines have thus all been proscribed by agreements which, in their intent, are universal. No comparable prohibition exists for nuclear weapons. In 1996, in order to throw light on the question of whether the threat to use nuclear weapons, or nuclear warfare itself, constitutes a violation of international law, the UN General Assembly asked the International Court of Justice to produce an Opinion.

The nuclear-weapons states took the proceedings extremely seriously. They made huge efforts to try to prevent a ruling by the court. The Western nuclear-weapons states in

47 Annette Schaper, *A Treaty on the Cutoff of Fissile Material for Nuclear Weapons - What to Cover? How to Verify?* (HSFK: PRIF Report 48; Frankfurt/M., 1997).

particular, and their major allies - Germany, Italy, and the Netherlands - disputed the competence of the court to deal with what, in their opinion, was a primarily political issue, not an issue of international law, and they accordingly called on the court to refrain from issuing a ruling. At the same time, they took the precaution of preparing a counter-argument in case (and this is what actually happened) the court asserted its authority. The use of nuclear weapons, so these states claimed in both their written and their oral depositions, was covered by Article 51 - the right to self-defence - especially since there was no international legal instrument that placed a general ban on the ownership or use of nuclear weapons, as was the case for biological and chemical weapons. Moreover, so they argued, the large number of states that accepted the doctrine of deterrence as a national defence-concept (the Western nuclear-weapons states and their allies, and Russia) indicated that no relevant international customary law existed in this area. In addition, nuclear weapons could not be classified straightforwardly as 'inhumane': discrimination between civilians and combatants was perfectly possible according to the type of weapon and the mode of use; and long-term injury resulting from nuclear radiation was an accidental side-effect of use, not its primary goal. On top of all this, the real objective of the possession of nuclear weapons - the prevention of any kind of war - was deeply humanitarian.

The court's Opinion did not fall in with the pronouncements of the nuclear-weapons states; instead, it declared the use of nuclear weapons for military purposes to be 'generally' contrary to international law because such weapons clearly fell within the definition of inhumane weapons: they were by their nature incapable of differentiating between civilians and combatants, and they caused unnecessary suffering through radioactive contamination. The court thus rightly paid no attention to the pronouncements of the nuclear-weapons states. Instead, it came to the conclusion that, in the vast majority of scenarios involving the use of nuclear weapons, it was likely that considerable harm would be caused to the civilian population, and that harm from radiation, though indeed a 'side-effect', was none the less an inescapable consequence of nuclear explosions. This accords fully with the conclusions drawn from war-fighting scenarios of the kind familiar in particular from the United States.⁴⁸

The court's Opinion is thus one step on the way to the complete prohibition of nuclear weapons. Overall, it may be seen as the legal formulation of a behavioural norm that is already deeply ingrained in the conduct of states: the non-use of nuclear weapons.⁴⁹ In addition, the judges concluded - unanimously - that the nuclear-weapons states had an obligation to engage in serious and effective negotiations aimed at securing complete nuclear disarmament. This nullified the attempts of the nuclear-weapons states, within the

48 International Court of Justice, Year 1996, 8 July, General List No. 958, Legality of the Threat of use of Nuclear Weapons.

49 See Thomas C. Schelling, *The Conventional Status of Nuclear Weapons* (Univ. of California, Los Angeles, Center for International Relations: Working Paper 5; 1994); Nina Tannenwald, 'Dogs that Don't Bark: The United States, the Role of Norms, and the Non-Use of Nuclear Weapons in the Post-World War Two Era', Ph.D. diss (Cornell University, 1995).

framework of the NPT, to water down this obligation by linking it to the (utopian) aim of 'general and complete disarmament'.

The ICJ's 1996 Opinion is the ultimate international legal ruling on the legal status of nuclear weapons. As such, in a country like Germany, which has a special interest in strengthening international law, it should serve as a guide-line for policy-making. The notion that nuclear weapons are more legitimate than chemical weapons or napalm does indeed seem wrongheaded. This gives Germany cause to review its own involvement in strategies that have a nuclear substratum and are difficult to reconcile with the court's Opinion: utilizing nuclear deterrence as a counter to undefined risks, in the way that NATO continues to do, is anachronistic; it lacks strategic justification, assumes a blanket right to engage in (non-specific) threats to use nuclear weapons, and no longer accords with the legal situation as created by the ICJ Opinion.

5. Prospects: The Interests of Non-Nuclear-Weapons Germany and the Dilemma over the Alliance

Germany's well-being is founded on its close links with its friends and allies. These friends and allies include three nuclear-weapons states, which, despite many a ritual exercise in rhetoric, show no inclination to relinquish their status. My analysis up to now has indicated a clear German interest in nuclear disarmament. The country's partnership-links with France, the USA, and Britain are a countervailing interest. Anyone who demands of a German government an attitude of uncompromising confrontation with the nuclear-weapons states completely overlooks the fact that the peaceful European relations which have actually made it possible for us to think seriously about nuclear disarmament are rooted in just the kind of multilateral relations that could be fundamentally jeopardized by an excessively radical disarmament policy. This dilemma has yet to be properly appreciated. Policy-making must take it on board.

Of course, the correct response is not anticipatory subservience to the self-interests of the nuclear-weapons states. On the contrary, such behaviour brings with it the risk that Germany's own legitimate interests, once recognized, will repeatedly be pushed to the bottom of the list. For one thing, this will mean Germany will no longer be taken seriously in the other capitals of the world. For another, a considerable degree of frustration will build up against Germany's partners, and this may later erupt. A judicious Germany policy will set out German interests very clearly, but when it comes to specifics will be ready to accommodate the divergent interests of nuclear-armed partners.

The first task, then, is for Germany to define its own positions as a non-nuclear-weapons state and to make it clear to its allies that, following the end of the East-West conflict, for obvious strategic reasons, the Bonn/Berlin perspective has changed. Paris, London, and Washington must understand and be prepared for the fact that, where its interests as it defines them so indicate, the German government intends to adopt its own stance, even if divergent, if it feels this will bring it a gain in security in the long term.

A 'middle way' position such as that proposed by the Canberra Commission and introduced into international diplomacy by the 'New Agenda' group is also compatible with German interests: the goal of disarmament is clearly stated, but at the same time the nuclear-weapons states are not expected to stipulate straight away the exact juncture at which a nuclear-free world is to be achieved. Rather, a 'menu' of interim steps is proposed, from which the most appropriate elements can be selected for use in negotiations. Each of these steps (transparency measures, further reductions - particularly in tactical nuclear weapons, reduction in the readiness of remaining nuclear weapons, elimination of fissile material, changes in doctrines) in itself serves to enhance international security, without jeopardizing the position of the nuclear-weapons states. In fact, in concrete terms, most of these measures mean an increase in security for these states. What Germany has to do is to get its priorities clear in its mind. From the point of view of security, attention should be focused on tactical nuclear weapons, for the reasons set out above. The huge Russian arsenal, which numerous reports have shown to be inadequately controlled, is a source of risk that has to be neutralized. To achieve this, it will make sense, in any event, to put the tactical nuclear weapons which NATO has deployed in Europe up for consideration. If a complete renunciation of all tactical nuclear weapons cannot be achieved, consolidation within central sites in the USA and Russia (if possible on the far side of the Urals) would be a second-best solution - in which case drastic reductions on the Russian side would be appropriate. One possibility, as an interim step prior to the complete elimination of tactical nuclear weapons, would be to agree a level of a few hundred (200-300) - which, incidentally, would still be a horrendous number, given the destructive potential of such weapons. A second priority would be to achieve as great a degree of de-alerting as possible of strategic arsenals, thus drastically reducing the danger of an erroneous or unauthorized launch of nuclear-armed missiles.⁵⁰

As regards the goal of reducing discrimination, three measures must have priority. The first is the demand for increased transparency of nuclear-weapons arsenals and stocks of fissile materials destined for military purposes. This could take the form of a register.⁵¹ Transparency of this kind would act as a counterweight to the privileged position of the nuclear-weapons states and would establish the principle of accountability in a clearly visible form. The second priority is to provide the Cut-off Treaty with a comprehensive verification-system which as far as possible - in other words, with the exception of those installations still being used for nuclear-weapons assembly and disassembly - would place nuclear-weapons and non-nuclear-weapons states on a par in terms of verification obligations. Thirdly, the handing-over of fissile material removed from military use to the International Atomic Energy Organization for verification should be made both compulsory and irreversible.⁵²

50 Bruce G. Blair/Harold A. Feiveson/Frank von Hippel, 'Taking Nuclear Weapons Off Hair-Trigger Alert', *Scientific American*, Nov. 1997; Jonathan Dean, 'De-alerting: A Move towards Disarmament', *UNIDIR Newsletter* (July 1998).

51 Op. cit. (fn 2).

52 Annette Schaper/Katja Frank, *Ist eine kernwaffenfreie Welt verifizierbar?* (HSFK: HSKF-Report 6; Frankfurt/M., 1998).

Often the nuclear-weapons states themselves reject interim measures as modest as this with the observation that by accepting them, they would place themselves on a 'slippery slope', which would ultimately mean their being forced into measures that ran counter to their wishes and interests - meaning, of course, nuclear disarmament. The talk about a 'slippery slope' is thus an implicit admission that the nuclear-weapons states do not propose to honour an obligation long since entered into (Art. VI of the NPT, as confirmed in 1995). This is classic 'rogue state' behaviour. Incidentally, the 'slippery slope' argument spells the ultimate capitulation of diplomacy: not doing something reasonable because one is afraid not to have enough backbone in the future to resist what is held to be unreasonable. Extrapolated logically, this amounts to a rejection of any change in the status quo in any area of politics. This kind of discourse is either not serious, and thus dishonest, or else totally mindless. The fact that it is being wheeled out ever more frequently by the nuclear-weapons states is an indication of the dearth of convincing arguments.

Where one adopts positions that lead to conflict with allied nuclear-weapons states, it is also advisable to work to ensure that this conflict remains within limits. This includes speaking out against radical demands that one regards as unrealistic or as not being likely to be accepted by the nuclear-weapons states in the foreseeable future (immediate negotiations on a nuclear-weapons convention, for example). It also includes standing up for friends where disarmament measures undertaken by them are insufficiently acknowledged, or are actually dismissed. It also includes, finally, being ready to consult intensively and frequently on the differing positions - without, of course, being obliged always to fall into line with the nuclear-weapons states at the end of the consultations.

Given its interests, it seems inappropriate for Germany to play the role of trusty henchman to the Western nuclear-weapons states. Like Canada and Australia - both reliable allies of the USA - Germany should opt for the position of 'bridge-builder' between the nuclear-weapons states and their non-aligned critics.