

Germany's nuclear weapons and climate change policies with respect to international human rights law

List of Issues Submission to the UN Human Rights Council
during its Universal Periodic Review (UPR) of Germany

44th Session of the UPR Working Group
6 – 17 November 2023

Submitted April 5, 2023 by World Future Council*
and
Aotearoa Lawyers for Peace, Basel Peace Office and Youth Fusion

* World Future Council is a non-governmental organization in consultative status with the United Nations Economic and Social Council since 2005



Table of Contents

1. Summary - *page 2*
2. Nuclear weapons
 - 2.1. The threat to human rights and humanity from nuclear weapons – *page 3*
 - 2.2. International law applicable to nuclear weapons including human rights law – *page 3*
 - 2.3. Policies and practices of Germany inconsistent with international law – *page 4*
 - 2.3.1. Threatening to use nuclear weapons including first-use
 - 2.3.2. Nuclear sharing
 - 2.3.3. Failure to act in good faith for nuclear disarmament
 - 2.3.4. Government investments in the nuclear weapons industry
 - 2.4. Positive measures undertaken by Germany – *page 6*
 - 2.5. Recommendations – *page 7*
3. Climate change
 - 3.1. The threat to human rights and humanity from climate change – *page 8*
 - 3.2. International law applicable to protection of the climate – *page 8*
 - 3.3. Policies and practices of Germany – *page 9*
 - 3.4. International initiatives to protect the climate – *page 9*
 - 3.5. Recommendations – *page 10*

1. Summary

The civil society organizations making this submission contend that the positions and actions of the government of Germany, with regard to the role of nuclear weapons in its security policies, are not in conformity with their obligations under international law, including obligations under the UN Charter, international humanitarian law and international human rights law including the Right to Life (Article 6 of the International Covenant on Civil and Political Rights).

The general illegality of the threat or use of nuclear weapons, and the universal obligation to negotiate for their complete elimination, have been affirmed by the International Court of Justice in its *Advisory Opinion on the Threat or Use of Nuclear Weapons* (July 8, 1996) and by the UN Human Rights Committee in its *General Comment 36* of October 30, 2018.

Germany's participation in the threat to use nuclear weapons, and in the planning and preparation for such use, as part of their membership in the North Atlantic Treaty Organization (NATO) violates their obligations under international law. In addition, the deployment of US nuclear weapons in Germany is likely to be in violation of international law.

It is recommended that Germany reaffirm the norm of non-use of nuclear weapons and adopt an interim policy of no-first-use, end the deployment of nuclear weapons on their territory, commit to working for the complete global elimination of nuclear weapons to be achieved no later than 2045 (the 100th anniversary of the United Nations), and end any government support for the production of new nuclear weapons including public investments in the nuclear weapons industry.

The civil society organizations making this submission also contend that the positions and actions of the government of Germany are not in conformity with obligations under international law to protect the climate for current and future generations. The International Court of Justice case on States' obligations to protect the climate for current and future generations provides an opportunity for Germany to enhance the implementation of its obligations to protect the climate, and to contribute to the global implementation of climate protection obligations.

2. Nuclear weapons

2.1. THE THREAT TO HUMAN RIGHTS AND HUMANITY FROM NUCLEAR WEAPONS

On January 24, 2023, the Bulletin of Atomic Scientists set the hands of the Doomsday Clock to 90 Seconds to Midnight indicating the high risks of a global catastrophe from nuclear war, climate collapse or other existential threat to current and future generations.¹

The threat of nuclear war has increased markedly through conflicts involving nuclear armed and allied states. Any use of nuclear weapons would cause catastrophic humanitarian consequences. Multiple uses of nuclear weapons in armed conflict could lead to the destruction of civilization as we know it.

Indeed, even the testing and production of nuclear weapons, regardless of whether or not they are used again in armed conflict, causes trans-generational harm impacting on the human rights of current and future generations.

Germany, as a member of the NATO nuclear alliance, is contributing to and participating in these nuclear threats.

2.2. INTERNATIONAL LAW APPLICABLE TO NUCLEAR WEAPONS INCLUDING HUMAN RIGHTS LAW;

The threat or use of nuclear weapons has been affirmed as violating international human rights law, international humanitarian law and international law of peace and security.

2.2.1 International Human Rights Law:

In paragraph 66 of General Comment No. 36 on the right to life², the United Nations Human Rights Committee stated:

The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law.

States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-state actors, to refrain from developing, producing, testing, acquiring, stockpiling, selling, transferring and using them, to destroy existing stockpiles, and to take adequate measures of protection against accidental use, all in accordance with their international obligations.

They must also respect their international obligations to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control and to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with principles of international responsibility.

¹ See *Doomsday Clock set at 90 seconds to midnight*, Bulletin of Atomic Scientists, January 24, 2023 <https://thebulletin.org/2023/01/press-release-doomsday-clock-set-at-90-seconds-to-midnight/>

² General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life. https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf

This paragraph complements and updates *CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life*, adopted by the Human Rights Committee on 9 November 1984.³

Under the ICCPR, Article 4(2), the right to life is non-derogable, to be observed in all circumstances, even in the event of a “*public emergency which threatens the life of the nation.*” Germany is a state party to the ICCPR and as a result is obligated to implement its provisions in good faith according to Article 26 of the 1969 Vienna Convention on the Law of Treaties (*pacta sunt servanda*). Even if the General Comment is not legally binding as such, it is considered the Committee’s authentic interpretation of Article 6 and the relevant practice thereto.

2.2.2 International Humanitarian Law and the Laws of Peace and Security

The obligations under *international human rights law* to not threaten or use nuclear weapons, and to pursue comprehensive nuclear disarmament, are reinforced by the *international law applicable to armed conflict*, which includes international humanitarian law (*jus in bello*) and the laws of peace and security including Article 2 of the UN Charter (*jus ad bellum*).

The International Court of Justice in 1996 affirmed that this body of law, and additional elements of customary international law, renders the threat or use of nuclear weapons generally illegal and requires the pursuit and conclusion of nuclear disarmament in all its aspects under strict and effective international control. This law is universally binding.

Since 1996, the UN General Assembly has called on UN member states to implement these obligations by negotiating a nuclear weapons convention – an international treaty to prohibit and eliminate nuclear weapons.⁴

Germany has accepted an obligation to engage in negotiations for nuclear disarmament under Article VI of the Nuclear Non-Proliferation Treaty⁵ But has done little to implement this (see Section 2.3.2 below).

2.3. POLICIES AND PRACTICES OF GERMANY INCONSISTENT WITH INTERNATIONAL LAW INCLUDING HUMAN RIGHTS LAW

Germany is in violation of its obligations under international law, including international human rights law, through its participation in the threat to use nuclear weapons and the planning and preparation for the use of nuclear weapons as part of their membership in the North Atlantic Treaty Organization (NATO). Germany is also in violation of its obligations under international law through its failure to advance, support or join negotiations for comprehensive nuclear disarmament.

2.3.1. Threatening to use nuclear weapons including the first-use option

Germany is a member of NATO which requires agreement to the NATO Strategic Concept, the current version of which explicitly includes support for nuclear deterrence, and in particular the extended nuclear deterrence provided by US nuclear weapons.⁶ This has been reaffirmed in other NATO documents including

³ See *CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life*. Adopted at the Twenty-third Session of the Human Rights Committee on 9 November 1984. <https://www.refworld.org/docid/453883f911.html>

⁴ See, for example, [A/RES/70/56](#), *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons*, adopted by the UNGA on Dec 7, 2015.

⁵ “*Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.*” Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Article VI, at <https://www.un.org/disarmament/wmd/nuclear/npt/text/>

⁶ See, for example, Para 18 of the 2010 NATO Strategic Concept which notes that: “The supreme guarantee of the security of the Allies is provided by the strategic nuclear forces of the Alliance, particularly those of the United States.” https://www.nato.int/strategic-concept/pdf/Strat_Concept_web_en.pdf

the *Brussels Summit Declaration*, July 2018⁷ and the *NATO Leaders Meeting Declaration*, London, 3-4 December 2019.⁸

The USA has made it clear that their plans and preparations to defend allies, including Germany, involve the threat of use of nuclear weapons and the option to deploy and use nuclear weapons in defence of their allies.⁹

In addition, Germany is a member of NATO's Nuclear Planning Group, in which it participates in NATO plans and operations to threaten the use of nuclear weapons and to prepare for their possible use.¹⁰

NATO policy for use of nuclear weapons is based on the doctrine and practice of 'flexible response'. This includes maintaining an option to use nuclear weapons in a range of security situations, including the **first-use of nuclear weapons** in response to a conventional attack or imminent attack, threat of attack from nuclear weapons or threat of attack with other weapons of mass destruction.

2.3.2. Nuclear sharing: violation of the Non-Proliferation Treaty

Germany hosts approximately 20 United States B61 nuclear weapons at its **Büchel Airbase** and maintains operational measures to 'deliver' those nuclear weapons by German planes to potential targets in wartime. The B61 bombs are officially 'owned' and controlled by the United States. However, during armed conflict, the nuclear sharing agreement between the USA and Germany provides for the transfer of control of the weapons to Germany to enable them to use the weapons.

A number of non-nuclear States Parties to the Nuclear Non-Proliferation Treaty (NPT) have argued that the US/NATO such nuclear sharing arrangements are in violation of the NPT, under which "*Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons*" (Article 1) and "*Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons*" (Article 2).¹¹

The United States argues that such nuclear sharing arrangements do not violate the NPT because they "*do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling.*"¹²

However, the United States' argument that NPT would no longer apply during armed conflict finds no support in the Vienna Convention on the Law of Treaties which holds that "*The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of obligations under a treaty.*"¹³

Under Article X of the NPT, withdrawal is possible but requires three months' notice plus an explanation of the "*extraordinary events it regards as having jeopardized its supreme interests.*" If the United States, in time of armed conflict, decided to transfer control to the German government of the nuclear weapons hosted by

⁷ Brussels Summit Declaration, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels, https://www.nato.int/cps/en/natohq/official_texts_156624.htm

⁸ London Declaration, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in London 3-4 December 2019. https://www.nato.int/cps/en/natohq/official_texts_171584.htm?selectedLocale=en

⁹ See, for example, the [US Nuclear Posture Review 2018](#), pp 17, 22, 23, 34

¹⁰ Nuclear Planning Group, NATO, https://www.nato.int/cps/en/natolive/topics_50069.htm

¹¹ Does NATO nuclear sharing breach the NPT? in NATO: Nuclear Sharing or Proliferation? <https://www.files.ethz.ch/isn/90409/05-04%20NATO%20Nuclear%20Sharing%20or%20Proliferation.pdf>

¹² See *NATO Nuclear Sharing: Opportunity for Change?* Jeff King, Chris Lindborg, Philip Maxon – BASIC, 2008. https://basicint.org/wp-content/uploads/2018/06/gtz09_0.pdf

¹³ Vienna Convention on the Law of Treaties, Article 42 para 2. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Germany, the transfer time following such a decision would likely take hours, days or at the most weeks, not wait for an announcement by the United States and Germany of withdrawal from the NPT followed by the required 3 months before such withdrawal could come into effect.

As such, the nuclear sharing arrangements constitute plans and preparations for a breach of the NPT, even if they might not constitute a material breach prior to the transfer of control of the weapons.

In addition, the NATO practice of nuclear sharing has provided a precedent for similar proliferation/sharing of nuclear weapons by Russia. On March 26, 2023, Russian President Putin announced that Russia plans to station tactical nuclear weapons in Belarus. Putin argued that such deployment was no different to US deployment of nuclear weapons in NATO countries.¹⁴ It is believed that Russia already deploys nuclear weapons in Kaliningrad, a Russian enclave between Poland and Lithuania.¹⁵

2.3.3. Failure to implement nuclear disarmament obligations

Germany continues to abstain on the annual UN General Assembly resolution calling on Member States to implement their nuclear disarmament obligations by engaging in “multilateral negotiations leading to nuclear disarmament in all its aspects under strict and effective international control”¹⁶ and also continues to abstain on the annual UN General Assembly resolution calling for the implementation of this obligation through negotiations “on effective nuclear disarmament measures to achieve the total elimination of nuclear weapons, including, in particular, on a comprehensive convention on nuclear weapons.”¹⁷

In addition, Germany continues to oppose the *Treaty on the Prohibition of Nuclear Weapons*, which was negotiated by non-nuclear States in 2017 and entered into force for States Parties in 2021.

2.3.4. Government Investments in the nuclear weapons industry

Investments in the nuclear weapons industry stimulate and support the production of nuclear weapons, and are therefore in violation of international law requiring nuclear disarmament. A number of State (Bundesrat) and City governments have adopted policies to divest their pension funds from the nuclear weapons industry.¹⁸ However, the German Federal government has not adopted any policy on nuclear weapons divestment. KfW IpeX Bank, which is 80% owned by the German Federal Government and 20% owned by the German federal states, has an estimated USD\$ 166.70 million invested in corporations manufacturing nuclear weapons, delivery vehicles or components of these, including EADS and Rolls Royce Corporations.¹⁹

2.4. POSITIVE MEASURES UNDERTAKEN BY GERMANY

The Government of Germany has made some positive steps to prevent the actual use of nuclear weapons and contribute to the achievement of a nuclear-weapon-free world. These include adoption of feminist principles in foreign policy,²⁰ participating in the *International Partnership for Nuclear Disarmament*

¹⁴ Putin says Moscow to place nuclear weapons in Belarus, US reacts cautiously. Reuters, March 26, 2023. <https://www.reuters.com/world/europe/putin-says-moscow-has-deal-with-belarus-station-nuclear-weapons-there-tass-2023-03-25/>

¹⁵ See *Why is Kaliningrad at the center of a new Russia-NATO faceoff?* The Brookings Institute, June 2022.

<https://www.brookings.edu/podcast-episode/why-is-kaliningrad-at-the-center-of-a-new-russia-nato-faceoff/>

¹⁶ Most recent resolution is A/RES/77/57: *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons*, adopted on December 7, 2022 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/739/23/PDF/N2273923.pdf?OpenElement>

¹⁷ Most recent resolution is A/RES/77/47: *Follow-up to the 2013 high-level meeting of the General Assembly on nuclear disarmament*, adopted on December 7, 2022. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/737/11/PDF/N2273711.pdf?OpenElement>

¹⁸ This includes the States/Bundersrats of Baden-Württemberg, Berlin (Bundesland), North Rhine-Westphalia and Lower Saxony and the cities of Bremen, Göttingen, Münster, Oldenburg, Stuttgart and Hannover. See <https://nuclearweaponsmoney.org/legislation/>

¹⁹ See <https://www.dontbankonthebomb.com/germany/>.

²⁰ See *Shaping Feminist Foreign Policy: Federal Foreign Office Guidelines*, March 2023, https://www.shapingfeministforeignpolicy.org/papers/Guidelines_Feminist_Foreign_Policy.pdf

Verification²¹, advancing incremental nuclear disarmament measures at the Nuclear Non-Proliferation Treaty Review Conferences especially in 2000 and 2010, and participating in the Stockholm Initiative from 2018.²² Germany also joined with other G20 countries in November 2022 in declaring that “*The threat of use or use of nuclear weapons is inadmissible.*”²³

However, so long as Germany continues to engage in the threat to use nuclear weapons, and rejects initiatives to prohibit and eliminate the weapons, these incremental measures are insufficient to meet their obligations under international human rights law, international humanitarian law and the law of peace and security.

2.5. RECOMMENDATIONS

In order to implement their nuclear disarmament obligations under international human rights law, international humanitarian law and the law of peace and security, it is recommended that the government of Germany:

1. Propose the non-deployment by USA and Russia of nuclear weapons in allied countries (which would include the withdrawal of US nuclear weapons in Germany);
2. Welcome the *Treaty on the Prohibition of Nuclear Weapons* and participate in the Second Conference of States Parties (November 2023) as an observer country;
3. Initiate a diplomatic initiative to engage nuclear armed and allied states in negotiation of a nuclear weapons convention or package of agreements for the global prohibition and phased elimination of nuclear weapons under strict and effective verification and compliance;²⁴
4. Announce support for the adoption of no-first-use policies by all nuclear armed and allied states;
5. Propose to the next NATO Summit adoption of a policy of *no-first-use of nuclear weapons* and a goal for NATO to eliminate nuclear deterrence from its security policy within 10 years;
6. Reaffirm the conclusion of the G20 Bali Leaders Declaration that ‘*the threat or use of nuclear weapons is inadmissible*’, and move to enshrine this norm through a UN General Assembly Resolution and/or the Final Declaration to be adopted at the UN Summit of the Future (Sep 2024);
7. Call on nuclear armed and allied states to commit to achieving the global elimination of nuclear weapons no later than 2045, the 100th anniversary of the United Nations;²⁵
8. Adopt a policy of non—investment of public funds in the nuclear weapons industry and implement this through nuclear weapons divestment by the *KfW IpeX Bank* and any other government-managed financial institutions currently investing in nuclear weapons.

²¹ See *International Partnership for Nuclear Disarmament Verification* <https://www.ipndv.org/>

²² See *The Stockholm Initiative: A renewed commitment to Nuclear Disarmament*, German Federal Foreign Office, July 2021. <https://www.auswaertiges-amt.de/en/newsroom/news/stockholm-initiative/2469262>

²³ G20 Bali Leaders Statement, November 17, 2022, para 4. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/16/g20-bali-leaders-declaration/>

²⁴ See *Abolition 2000 NWC Reset: Frameworks for a Nuclear-Weapon-Free World*, A working paper for the 10th NPT Review Conference submitted by the Abolition 2000 Working Group on the UN Disarmament Agenda and a Nuclear Weapons Convention, July 2022 <https://www.abolition2000.org/wp-content/uploads/2022/07/NWC-working-paper-for-the-NPT-Review-Conference-Updated-25-July-2022.pdf>

²⁵ See *Abolition 2000 NWC Reset* (footnote 22 above)

3. Climate change

3.1. THE THREAT TO HUMAN RIGHTS AND HUMANITY FROM CLIMATE CHANGE

Reports of the *Intergovernmental Panel on Climate Change* indicate that anthropogenic emissions of greenhouse gases are causing significant climate change, with more frequent and intense extreme weather events, land loss and degradation, sea level rise, coastal erosion, ocean acidification, and the retreat of mountain glaciers, leading to displacement of affected persons and further threatening food security, water availability and livelihoods. Climate change also impacts adversely on efforts to eradicate poverty and achieve sustainable development. It is also stimulating, or amplifying, conflicts leading to further adverse impacts on human well-being.

*Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals.*²⁶

The *Intergovernmental Panel on Climate Change* also reports that current action by governments is insufficient to halt a continued increase in average global temperatures, let alone to reverse this and restore the climate to a safe and sustainable condition.

3.2. INTERNATIONAL LAW APPLICABLE TO CLIMATE CHANGE;

There is a growing body of human rights, environmental, peace and security (human security) law applicable to the issue of climate change. This includes resolutions, agreements and declarations with specific obligations on greenhouse gas emissions, global temperature targets, adaptation and remediation measures, and financing mechanisms and commitments. This also includes law not specifically mentioning climate change, but applicable to it.

This body of law includes, inter-alia;

- UN General Assembly resolutions 77/165 of 14 December 2022 on the protection of the global climate for present and future generations of humankind, and 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment;
- Human Rights Council resolution 50/9 of 7 July 2022 on human rights and climate change (and all previous resolutions of the Human Rights Council on this issue);
- Human Rights Committee General Comment 36 on the Right to Life, which affirms that *Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life;*
- The United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement, which aim to limit average global temperature increase to 1.5°C above pre-industrial levels, and which set forth equitable processes for adaptation to the adverse effects of climate change.

²⁶ See *Intergovernmental Panel on Climate Change AR6 Synthesis Report: Climate Change 2023* <https://www.ipcc.ch/report/sixth-assessment-report-cycle/> and the *Summary for Policymakers* https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf, March 2023.

3.3. POLICIES AND PRACTICES OF GERMANY

Germany continues to contribute to climate change, in potential violation of its human rights and environmental law obligations, primarily through excessive carbon emissions. Germany comprises 1.07% of the world's population, yet contributes 2.1% of global carbon emissions – about twice the global average.

Germany contributes such a disproportionately high contribution to climate change through a range of activities, which should be cut, significantly reduced or made sustainable. These include fossil fuel consumption (coal, oil and natural gas), agriculture, transport, buildings and manufacturing. 75% of Germany's energy consumption still comes from fossil fuels, with only 16% from renewable energy (6% is from nuclear energy).

In 2021, Germany amended its Climate Law to encompass a goal of climate neutrality (zero net emissions) by 2045.²⁷ The amendment was enacted in response to a ruling from Germany's highest court in April 2021 that the government's climate policies were insufficient and violated the human rights of future generations because they lacked emission reduction targets beyond 2030.²⁸

The amended Climate Law provides an encouraging example of legislative action in response to human rights obligations affirmed by a national/federal court on the issue of climate change.

However, since the enacting of the new law, Germany has failed to meet its annual emission.²⁹ And even if Germany manages to meet the targets in subsequent years, the revised German goals and timeframe are insufficient to cut emissions fast enough to meet global targets of keeping atmospheric temperature rise below 1.5 degrees Celsius, and even insufficient if the global goal is 2 degrees atmospheric change.³⁰

3.4. INTERNATIONAL INITIATIVES TO PROTECT THE CLIMATE

3.4.1. *The International Court of Justice Advisory Opinion on Climate Change*

The fact that international law applicable to climate change has not curtailed the destructive emission of climate change gases nor prevented global temperatures to continue rising, nor facilitated equitable or sufficient responses to the impacts of climate change, has led to the United Nations General Assembly, on March 29, 2023, adopting a resolution (without any opposition) requesting an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change.³¹ Germany was one of the core group of countries that introduced this initiative to the UN General Assembly.

Such legal action at the global level is vital in order to ensure equitable application of the law universally, regardless of differences in domestic legal systems. All UN member States should now engage in the proceedings and prepare to implement the decision that will be rendered by the Court.

3.4.2. *Beyond Oil and Gas Alliance*

The Beyond Oil and Gas Alliance (BOGA)³² is an international alliance of governments (federal and state) established by Costa Rica and Denmark to facilitate the managed phase-out of oil and gas production.

²⁷ See *Germany passes new Climate Action Law, pulls forward climate neutrality target to 2045*, <https://www.cleanenergywire.org/news/germany-passes-new-climate-action-law-pulls-forward-climate-neutrality-target-2045>

²⁸ See *Neubauer, et al. v. Germany*, Climate Change database, Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/> and *German top court finds key climate legislation insufficient in landmark ruling* <https://www.cleanenergywire.org/factsheets/german-top-court-finds-key-climate-legislation-insufficient-landmark-ruling>

²⁹ See *2022 emissions reduction too little to put Germany on track for 2030 target*, Clean Energy Wire, <https://www.cleanenergywire.org/news/2022-emissions-reduction-too-little-put-germany-track-2030-target> and *Germany 'must triple pace of emissions cuts' to meet 2030 target*, Climate Home News, <https://www.climatechangenews.com/2022/01/12/germany-must-triple-pace-emissions-cuts-meet-2030-target/>

³⁰ See Climate Tracker Action, Germany <https://climateactiontracker.org/countries/germany/>

³¹ UNGA Resolution *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, adopted March 29, 2023. <https://www.vanuatuicj.com/resolution>

³² Beyond Oil and Gas Alliance. <https://beyondoilandgasalliance.org/>

Members commit to end new concessions, licensing or leasing rounds for oil and gas production and exploration and to set a Paris-aligned date for ending oil and gas production and exploration on the territory over which they have jurisdiction. Currently there are 11 core members (Costa Rica, Denmark, France, Greenland, Ireland, Portugal, Quebec, Sweden, Tuvalu, Wales and Washington State), 2 associate members (California and New Zealand) and 5 friends (Chile, Fiji, Finland, Italy and Luxembourg).

3.4.3. *Fossil Fuel Non-proliferation Treaty*

The Fossil Fuel Treaty.Org coalition³³ is promoting the negotiation of a global treaty to:

- Prevent the proliferation of coal, oil and gas by ending all new exploration and production;
- Phase-out existing production of fossil fuels in line with the 1.5C global climate goal;
- Fast-track real solutions and a just transition for every worker, community and country;

Such a treaty would be complementary too, expand upon and codify the commitments undertaken by the Beyond Oil and Gas Alliance. The Fossil Fuel Non-proliferation Treaty proposal is supported by Tuvalu, Vanuatu, the European Parliament, World Health Organization and 79 Cities and Subnational Governments.

3.4.4. *Governance of the Global Commons*

Global Commons comprise areas that are not owned by anyone, but are common heritage for humanity and the Earth. These are the high seas, the atmosphere, Antarctica, outer space and the seabed (and increasingly cyber-space). The Global Commons surround, support and sustain our world’s ecosystems and are vital to sustainability and economic prosperity. In the report ‘Our Common Agenda’ the UN Secretary-General advanced the proposal to repurpose the United Nations Trusteeship Council to provide better global governance for the Global Commons. This proposal is finding increasing traction amongst governments and civil society in preparation for the UN Summit of the Future to be held in September 2024.³⁴

3.5. RECOMMENDATIONS

In order to respond adequately to climate change, Germany is encouraged to act nationally and globally by:

1. Participating in the proceedings of the *International Court of Justice Advisory Opinion on the obligations of States in respect of climate change* and preparing to implement the decision that will be rendered by the Court.
2. Joining the *Beyond Oil and Gas Alliance* and implementing the Alliance commitment to end new concessions, licensing or leasing rounds for oil and gas production and exploration and to set a Paris-aligned date for ending oil and gas production and exploration on the territory over which they have jurisdiction.
3. Supporting the negotiation and adoption of a *Fossil Fuel Non-Proliferation Treaty*.
4. Supporting the UN Secretary-General’s proposal for re-purposing the UN Trusteeship Council to provide global governance for the global commons – including the atmosphere - in order to better facilitate global implementation of obligations to protect the climate. This proposal could be considered and adopted at the UN Summit of the Future.

³³ See <https://fossilfuel treaty.org/>

³⁴ See *Repurpose the Trusteeship Council to Better Govern the Global Commons*, Excerpt from *Road to 2023: Our Common Agenda and the Pact for the Future*, The Stimson Center, June 2022 <https://www.unfoldzero.org/wp-content/uploads/Repurpose-the-Trusteeship-Council-to-Better-Govern-the-Global-Commons.pdf> and *Repurposing the Trusteeship Council to provide governance for the global commons*. David Hales, Chair of the Climate Action Task Force at the Parliament of the World’s Religions <https://www.unfoldzero.org/wp-content/uploads/Parliament-of-the-Worlds-Religions-Backgrounder-on-Repurposing-the-Trusteeship-Council.pdf>