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Preserving and Strengthening the Nuclear Non-Proliferation and Disarmament Regime

Jonathan Granoff President

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Introduction:

On Palm Sunday, 2009, U.S. President Barack Obama delivered a powerful speech in the center of Prague, stating “clearly and with conviction America’s commitment to seek the peace and security of a world without nuclear weapons.” His approach was moral in its purpose and practical in its application, offering several important steps toward achieving a nuclear weapons-free world, including the importance of strengthening the Nuclear Non-Proliferation Treaty (NPT).

The NPT is cornerstone of the global regime to combat the threat posed by nuclear weapons. Without it, the non-proliferation regime would crumble into non-existence. Yet the NPT alone will not save the non-proliferation regime. Other, supplementary measures must be taken—and taken soon—if our global security regime is to survive.

Of the utmost importance would be a clear unambiguous statement by leaders of states, particularly states with nuclear weapons, that confirms their commitment to work together to eliminate all nuclear weapons.

It is heartening that along with the measure outlined by President Obama on Palm Sunday, several other serious proposals and initiatives have recently been put forth, including, but not limited to, the “Hoover Initiative” plan outlined by former statesmen George Schultz, William Perry, Henry Kissinger and Sam Nunn, and the comprehensive, broad-based “Five Point Proposal” announced by the United Nations Secretary-General on October 24 of last year. Each of these proposals reinforces efforts to accomplish the same goal: a world free from the threat of nuclear weapons. These proposals make clear that, in the absence of an overarching framework for abolition, the nonproliferation regime is unsustainable.. These proposals all seek to set the compass point towards nuclear abolition.

The abolition of nuclear weapons will not happen immediately. Yet by calling for nuclear abolition, by, for example, placing squarely in the international debate, as the United Nations Secretary General Ban Ki-moon has done, the goal of a multilateral convention prohibiting the use and threat of use of nuclear weapons by all countries for all time, we set a marker in the ground, a standard by which to evaluate policies and determine if they help create the necessary political climate. It is time to think seriously about—and plan practically to achieve total legally binding nuclear weapons elimination.

Recognition of Where We Are

In 1995, in order to obtain the indefinite extension of the NPT, commitments to nuclear elimination were confirmed and strengthened by the five declared Nuclear Weapons States – China, United States, France, Russia, and Britain. However, with over 96% of the weapons, two Nuclear Weapons States -the United States and Russia- have not fully addressed their fundamental dilemma: they want to keep their nuclear weapons indefinitely and at the same time condemn others who would attempt to acquire them. It is as if parents were telling their children not to smoke while puffing on cigars themselves. It is simply not effective. The treaty, which will be reviewed in 2010, is at risk because many of those from whom non-proliferation is demanded

do not see reciprocal progress on disarmament. Demands made from this position of hypocrisy do not bring coherence to international order.

This incoherence in policies leads to instability in cooperation. Nothing could be more hazardous in today's world. In order to ensure that nuclear weapons do not proliferate to more states and to dangerous sub-state actors, confidence in the restraint of the exercise of power by the most powerful is needed. The trust and cooperation needed for a global assault against such threats will not be effective if some states flaunt their disarmament obligations yet display a passion for non-proliferation.

The path to stability and security is the return to promoting the pursuit of collective security through the rule of law. This is one reason why the international community is so very elated with the new U.S. Administration. It is clear that President Obama's agenda is consistent with the consensus agenda articulated in the NPT Review of 2000, especially the reaffirmed goal of elimination of nuclear weapons in the future and downgrading their political value in the present.

We must now take steps to ensure that these aspirations—shared by so many the world over—become realized policies. The movement toward elimination must become credible. It is simply impractical and hypocritical for some to say that nuclear weapons are morally acceptable for them to possess, and even threaten to use, and evil for others to attempt to acquire. That is why the compass point of elimination is essential. Incremental steps make the stated goal credible.

Moreover, these steps will enhance the global cooperation required for an effective regime to counter other global threats, such as terrorism, climate change and persistent poverty. Without credible disarmament progress, we risk diminishing the cooperation from Non-Nuclear Weapons States which are dissatisfied with the balance of the NPT bargain.

The principle should be: nuclear weapons are inordinately dangerous and must be eliminated. In the meantime, they must not proliferate to new states or new persons.

The NPT Bargain: Background (How Deep Is My Valley?)

To summarize, the NPT has a remarkable record of preventing the spread of nuclear weapons, but is now facing multiple challenges: regional crises in the Middle East and Northeast Asia; the spread of nuclear fuel cycle technology; and the insufficient compliance with disarmament commitments under Article VI.

The basic bargain underlying the text completed in 1968 was this: In exchange for a commitment from the Non-Nuclear Weapons States not to acquire nuclear weapons and to submit their peaceful nuclear activities to monitoring, to verify compliance with the non-acquisition commitment (Article II), the NPT Nuclear Weapons States pledged to engage in disarmament negotiations aimed at the elimination of their nuclear arsenals (Article VI) and promised the Non-Nuclear Weapon States unfettered access to peaceful nuclear technologies (e.g. nuclear power reactors and nuclear medicine; Article IV).¹

¹ See Thomas Graham, Jr., *Commonsense on Weapons of Mass Destruction* (2004) 10.

During the negotiations at its creation, several prominent Non-Nuclear Weapons States – Germany, Italy and Sweden, for example – would not permit the treaty to be permanent and ensured that it would be reviewed after 25 years and either be extended for a fixed period, be indefinitely extended (Article X), or lapse. At the 1995 Review and Extension Conference, many states were extremely dissatisfied with the progress on disarmament of the Nuclear Weapons States – U.S., Russia, U.K., France, and China – and argued that they would not accept the inequity of a dual global system of nuclear haves and have-nots. They demanded and obtained a bargain. It contained a Statement of Principles and Objectives for Nuclear Non-proliferation and Disarmament,² which politically, if not legally, conditioned the indefinite extension of the treaty, pledging to:

- complete a Comprehensive Nuclear-Test Ban Treaty by the end of 1996
- reaffirm the commitment to pursue nuclear disarmament
- commence negotiations on a treaty to stop production of nuclear bomb materials
- encourage the creation of nuclear weapons-free zones
- vigorously work to make the treaty universal by bringing in Israel, Pakistan and India
- enhance IAEA safeguards and verification capacity
- reinforce negative security assurances already given to Non-Nuclear Weapons States against the use or threat of use of nuclear weapons against them

The bargain to extend the treaty centered on a strengthened review process with near yearly preparatory conferences and a rigorous review every five years to ensure the promise as set forth in the Principle and Objectives:

“The determined pursuit by the Nuclear Weapons States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons.”

The 1995 re-commitment to and elaboration of the NPT nuclear disarmament obligation was reinforced by the 1996 advisory opinion of the International Court of Justice. Interpreting Article VI of the NPT and other international law, the Court unanimously held: “There exists an obligation to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects under strict and effective international control.”³

The 2000 Review Conference successfully reached a consensus on 13 Practical Steps to advance the commitments to lower the salience of nuclear weapons in policies, reinforce non-proliferation measures, and move toward the elimination of nuclear weapons. All 187 states parties agreed on the following measures:⁴

² 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Decision 2, “Principles and Objectives for Nuclear Non-Proliferation and Disarmament,” *Final Document*, Part I, NPT/CONF.1995/32, Annex: Access at <http://disarmament2.un.org/wmd/npt/1995nptrevconfdocs.html>.

³ International Court of Justice, “Legality of the Threat or Use of Nuclear Weapons,” Advisory Opinion of 8 July 1996, *ICJ Reports* (1996): 226, para. 105(2)F. Online at <http://www.icj-cij.org/icjwww/icasess/iunan/iunanframe.htm>.

⁴ 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, Vol. I, NPT/CONF.2000/28, Part I: 14-15. Access at <http://disarmament.un.org/wmd/npt/finaldoc.html>. The headings in bold in the text are provided for convenience and are not part of the Final Document.

- 1. Entry-into-Force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT):** The importance and urgency of signatures and ratifications, without delay and without conditions and in accordance with constitutional processes, to achieve the early entry into force of the CTBT.
- 2. Holding the Line Against Testing:** A moratorium on nuclear weapon test explosions or any other nuclear explosions pending entry into force of the CTBT.
- 3. Fissile Material Cut-off Treaty (FMCT):** The necessity of negotiations in the Conference on Disarmament on a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices. The Conference on Disarmament is urged to agree on a program of work which includes the immediate commencement of negotiations on such a treaty with a view to their conclusion within five years.
- 4. Negotiations on Nuclear Disarmament:** The necessity of establishing in the Conference on Disarmament an appropriate subsidiary body with a mandate to deal with nuclear disarmament. The Conference on Disarmament is urged to agree on a program of work which includes the immediate establishment of such a body.
- 5. Irreversibility:** The principle of irreversibility to apply to nuclear disarmament, nuclear and other related arms control and reduction measures.
- 6. Commitment to Elimination:** An unequivocal undertaking by the Nuclear Weapons States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all states parties are committed under Article VI.
- 7. Verified Reductions:** The early entry into force and full implementation of Strategic Arms Reduction Treaty (START) II and the conclusion of START III as soon as possible while preserving and strengthening the Anti-Ballistic Missile (ABM) Treaty as a cornerstone of strategic stability and as a basis for further reductions of strategic offensive weapons, in accordance with its provisions.
- 8. Control of U.S./Russian Excess Fissile Materials:** The completion and implementation of the Trilateral Initiative between the United States of America, the Russian Federation and the International Atomic Energy Agency.
- 9. Progress by Nuclear Weapons States:** Steps by all the Nuclear Weapons States leading to nuclear disarmament in a way that promotes international stability, and based on the principle of undiminished security for all:
 - Further efforts by the Nuclear Weapons States to reduce their nuclear arsenals unilaterally.
 - Increased transparency by the Nuclear Weapons States with regard to the nuclear weapons capabilities and the implementation of agreements pursuant to Article VI and as a voluntary confidence-building measure to support further progress on nuclear disarmament.
 - The further reduction of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process.
 - Concrete agreed measures to further reduce the operational status of nuclear weapon systems.
 - A diminishing role for nuclear weapons in security policies to minimize the risk that these weapons ever be used and to facilitate the process of their total elimination.
 - The engagement as soon as appropriate of all the Nuclear Weapons States in the process leading to the total elimination of their nuclear weapons.
- 10. Excess fissile materials under IAEA control:** Arrangements by all nuclear weapon states to place, as soon as practicable, fissile material designated by each of them as no longer required for military purposes under International Atomic Energy Agency (IAEA) or other relevant international verification and arrangements for the disposition of such material for peaceful purposes, to ensure that such material remains permanently outside of military programs.

11. General and Complete Disarmament: Reaffirmation that the ultimate objective of the efforts of states in the disarmament process is general and complete disarmament under effective international control.

12. Reporting: Regular reports, within the framework of the NPT strengthened review process, by all states parties on the implementation of Article VI and paragraph 4 (c) of the 1995 Decision on “Principles and Objectives for Nuclear Non-proliferation and Disarmament”, and recalling the Advisory Opinion of the International Court of Justice of 8 July 1996.

13. Verifying: The further development of the verification capabilities that will be required to provide assurance of compliance with nuclear disarmament agreements for the achievement and maintenance of a nuclear-weapon-free world.

This is a comprehensive and sophisticated agenda that provides guidelines for implementation in good faith of the Article VI disarmament obligation. Not every measure is specifically required for good-faith fulfillment of Article VI, but some elements are essential. Most of the world’s governments – including U.S. allies – agree that the key commitments include application of the principles of transparency, irreversibility, and verification of reduction and elimination of nuclear weapons; the necessity of a diminishing role for nuclear weapons in security policies; the reduction of the operational status of nuclear weapons systems; the entry into force of the CTBT; and negotiations on a Fissile Materials Cut-off Treaty.⁵

However, since 2000, the United States has backtracked on key commitments made in the Practical Steps, notably the CTBT; negotiation of a *verifiable* FMCT; the START process and the ABM Treaty. The 2002 bilateral Strategic Offensive Reductions Treaty (SORT) with Russia fails to apply the principles of transparency, verification, and irreversibility. Furthermore, it could be argued that SORT fails to diminish the role of nuclear weapons in security policies, a duty consistent with NPT pledges. The Bush Administration’s position was that the 2000 NPT commitments were only “political,” that circumstances changed, and that compliance with Article VI disarmament obligations has been demonstrated by a four-fold reduction in the size of its arsenal, matched by similar reductions by Russia, since the end of the Cold War. However, what is at stake here is not just a U.S.-Russian issue. The Practical Steps, adopted at the 2000 NPT Review Conference, represent an international consensus on the means for compliance with Article VI. Good faith requires at a minimum that the United States put forward alternative means for compliance if it ignores those upon which agreement had been reached. This the United States has not done. It is simply not enough to say that the U.S. and Russian arsenals have been reduced when their potential to destroy the world remains virtually the same.

Without active U.S. and Russian cooperation and leadership, hopes for progress on nuclear non-proliferation and disarmament were dashed from the outset of the 2005 Review Conference, held at the UN in May 2005. The states parties were unable to even generate a timely working agenda and 15 out of 20 days were squandered on procedural battles. Procedural squabbles masked real debate on substantive political differences. The capacity to make substantive progress on disarmament or non-proliferation was thwarted despite efforts of the world’s best diplomats. The 2005 agenda was stalled along several fault lines. The United States would not permit the commitments already made under the treaty review process to be the basis for a working agenda and focused on the proliferation threats posed by Iran and North Korea;

⁵ Evidence of the near-consensus is provided by UN General Assembly resolutions, notably the 2005 “Renewed Determination” resolution sponsored by Japan and nine other countries from both the North and South. It received the support of the vast majority of states, with 162 countries voting for it and only two against, the United States and India, with seven abstentions. A/RES/60/65; access at <http://www.un.org/Depts/dhl/resguide/r60.htm>.

Egypt demanded recognition of previous commitments, in particular regarding making the treaty universal; Iran baited the Nuclear Weapons States on their failure to make progress on disarmament, specifically the United States for its research on modified or new-design warheads with new military capabilities. In the end, no substantive consensus document was generated.

The U.S. unwillingness to specifically respond to demands to have its previous commitments reviewed placed the very integrity of the institution of the NPT at risk. For if commitments made yesterday need not be held to account today, why should any commitments made to the body of the NPT ever be taken seriously? Grave harm was done to international law at the 2005 Review Conference. Universally respected non-proliferation goals were not seriously negotiated, not because of a dearth of valid proposals, but because of a failure of political will. Effective means of addressing threats posed by States leaving the treaty, or, like Iran, using the treaty to develop nuclear energy with the potential for using technical advances and fissile materials to develop weapons, as well as the failure of NWS to fulfill their pledges to take practical steps toward elimination were not achieved.

All too many diplomats expressed concern that the U.S. was not taking international cooperative security under the rule of law seriously enough. In that regard one cannot overlook a statement made in the National Defense Strategy of the United States released in March 2005 by the Defense Department. In the section addressing the Changing Security Environment, there is a new definition of vulnerability, very much at odds with U.S. traditional advocacy of promoting law and diplomacy as a means of achieving security:

“Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism.”

Such an attitude has contributed to an institutional deadlock. The Obama Administration will gain enormous goodwill as it demonstrates a new commitment to returning to the road map set forth at the 2000 NPT Review and begins to fulfill the commitments made in 1995 to gain indefinite extension of the NPT. The international community welcomes U.S. support for strengthening international fora and judicial processes.

Looking Forward

The task now is to look forward; while we need to understand how we got to the present juncture, the issues are simply too serious to spend too much time regretting missed opportunities. Drawing on the rich history of agenda-setting in the NPT context, here are modest key steps that reinforce non-proliferation and disarmament.⁶

Fissile Materials Cut-off Treaty (FMCT)

An FMCT would permanently end production of fissile materials, primarily separated plutonium and highly enriched uranium (HEU), for use in weapons. It would affect most directly the countries possessing nuclear weapons; NPT Non-Nuclear Weapons States already are subject to a verified ban on diverting materials to weapons. Achievement of an FMCT would restrain

⁶ See Middle Powers Initiative, “Fulfilling the NPT Bargain for Disarmament and Non-Proliferation: *Next Steps*,” Briefing Paper for the Third Meeting of the Article VI Forum, Ottawa, September 28-29, 2006.

arms racing involving India, China, and Pakistan, cap Israel's arsenal, and establish ceilings on other arsenals as well. A verified FMCT also would help build a stable framework for reduction and elimination of warheads and fissile material stocks; help prevent acquisition of fissile materials by terrorists; meet a key NPT commitment; and institutionalize one of the basic pillars of a nuclear weapons-free world. When negotiations on the FMCT begin, the United States and Russia should recognize that verification is imperative and feasible.⁷

Verification of reduction and elimination of nuclear arsenals

President Reagan repeatedly invoked the Russian dictum, "trust but verify." It is essential to bring the principle of verification symbolized by that dictum back to center stage. The Strategic Offensive Reductions Treaty (SORT) requires Russia and the United States each to deploy no more than 2200 strategic warheads by 2012, but includes no provisions for verification of reductions or dismantling of warheads or delivery systems, leaving each country free to retain thousands of warheads in addition to those deployed. The two countries declared that they would make use of monitoring mechanisms under START to track reductions. But START expires in 2009, and SORT does not provide any schedule for reductions prior to 2012.

A high priority therefore is for the United States and Russia to agree on means to verify and make irreversible the reductions. The Weapons of Mass Destruction (WMD) Commission recommends negotiation of a new treaty that would further cut strategic forces and also provide for verified dismantlement of warheads withdrawn under SORT.⁸

In negotiating SORT, the Bush administration rejected a detailed agreement spelling out transparency and verification measures on the grounds that Cold War-style arms control is no longer necessary and that the United States has no interest in determining together with Russia the size and composition of the two countries' arsenals. This approach overlooks that Cold War or no, the two countries need to regulate their nuclear relationship; "partnership" is not necessarily forever. Further, accounting for warheads and verifying reductions is essential to achieving marginalization and elimination of nuclear weapons globally.

Verification is needed to bring greater security to the rest of the world because the rest of the world is properly concerned with the efficacy of the disarmament and arms reduction efforts of the United States and Russia. The Administration's recent overtures will bolster good will internationally when progress is made and such progress is presented to the NPT parties as formally reinforcing the NPT process. Bilateral steps must be contextualized as reinforcing the multilateral institutions.

In working towards a nuclear weapons-free world, many tools exist for effective verification and monitoring, especially with respect to declared facilities, warheads, and fissile

⁷ The current U.S. position is that extensive verification mechanisms could compromise the core national security interests of key parties, would be so costly that many countries would be hesitant to implement them, and still would not provide high confidence in the ability to monitor compliance. However, the International Panel on Fissile Materials and the Weapons of Mass Destruction Commission have persuasively refuted the argument against verifying the FMCT. See International Panel on Fissile Materials, *Global Fissile Materials Report 2006*, pp. 43-49, online at http://www.fissilematerials.org/ipfm/site_down/ipfmreport06.pdf; *Weapons of Terror* at 104. <http://www.wmdcommission.org/>

⁸ *Weapons of Terror* at 93. See, <http://www.wmdcommission.org/>

materials, as shown by studies this decade undertaken by the United Kingdom⁹ and the U.S. National Academy of Sciences.¹⁰ However, achieving confidence that reduction and elimination of arsenals has been implemented remains challenging. The possibility of hidden warheads, stocks of fissile materials, or capabilities are serious and valid concerns. The National Academy of Sciences found that confidence would increase based on monitoring programs undertaken on an ongoing, long-term basis in an atmosphere of transparency and cooperation.¹¹ An implication is that verification and transparency measures need to be implemented beginning *now*, above all regarding U.S.-Russian stocks and reductions. More broadly, all nuclear-armed States must initiate processes to apply the principles of verification, transparency, and irreversibility to the reduction and elimination of their arsenals. Declarations of fissile materials contained in military stocks and warheads, as recommended by the International Panel on Fissile Materials,¹² is one of the first steps that could be taken. Countries with nuclear weapons owe the rest of the world greater proof of compliance with their disarmament obligations. To that end, verification processes should involve international monitoring.

Reduction of the operational status of nuclear forces

The United States is now estimated to have more than 1,600 warheads ready for delivery within minutes of an order to do so, and Russia has more than 1,000 warheads similarly ready for launch.¹³ It should be an absolute scandal that, every moment of every day, the two countries remain locked in a Cold War-style nuclear standoff. Non-governmental experts have explained that the standoff can be defused through separation of warheads from delivery systems and other measures that lengthen the time required for a nuclear launch, from days to weeks to months.¹⁴ An accompanying step is the elimination of the launch-on-warning option that requires nuclear forces to be on what has been informally described as hair-trigger alert.¹⁵ The U.S. and Russia should follow the admonition of George W. Bush who said when he was a candidate for president in 2000: “The United States should remove as many weapons as possible from high-alert, hair-trigger status – another unnecessary vestige of the Cold War confrontation. Preparation for quick launch – within minutes after warning of an attack – was the rule during the era of superpower rivalry. But today, for two nations at peace, to keep so many weapons on high alert may create unacceptable risks of accidental or unauthorized launch.”

⁹ “Verification of nuclear disarmament: final report on studies into the verification of nuclear warheads and their components,” working paper submitted by the United Kingdom of Great Britain and Northern Ireland to the 2005 NPT Review Conference, NPT/CONF.2005/WP.1, and previous working papers cited therein. Online at http://www.reachingcriticalwill.org/legal/npt/RevCon05/wp/verification_UK.pdf.

¹⁰ Committee on International Security and Arms Control, National Academy of Sciences, *Monitoring Nuclear Weapons and Nuclear-Explosive Materials: An Assessment of Methods and Capabilities* (2005). Online at <http://www.nap.edu/catalog/11265.html>.

¹¹ *Id.* at 219-220.

¹² The IPFM “was founded in January 2006 and is an independent group of arms-control and nonproliferation experts from both nuclear weapon and non-nuclear weapon states. The mission of the IPFM is to analyze the technical basis for practical and achievable policy initiatives to secure, consolidate, and reduce stockpiles of highly enriched uranium and plutonium. These fissile materials are the key ingredients in nuclear weapons, and their control is critical to nuclear weapons disarmament, to halting the proliferation of nuclear weapons, and to ensuring that terrorists do not acquire nuclear weapons.”

¹³ See estimates by Bruce Blair, president of the Center for Defense Information, cited in John Burroughs, “The Man Who Averted Nuclear War,” *DisarmamentActivist.org*, January 19, 2006.

¹⁴ *E.g.*, David E. Mosher, Lowell H. Schwartz, David R. Howell, and Lynn E. David, *Beyond the Nuclear Shadow: A Phased Approach for Improving Nuclear Safety and U.S.-Russian Relations* (RAND, 2003). Online at <http://www.rand.org/publications/MR/MR1666>.

¹⁵ Bruce Blair, *Hair-Trigger Missiles Risk Catastrophic Terrorism* <http://www.cdi.org/blair/hair-trigger-dangers.cfm>

While most urgent with respect to Russia and the United States, it is also vital that other Nuclear Weapons States, which to various degrees already maintain their forces in a de facto de-alerted condition, adopt and affirm de-alerting as an entrenched, declared policy and practice. De-alerting would help alleviate risks associated with mistakes, coups, attacks on nuclear weapons facilities, false warnings, unauthorized launches, hacking into command and control systems, and developments that cannot now be anticipated. Depending on the extent of its execution and verification, it would also lessen the moral corruption inherent in reliance on nuclear weapons for security and defense.

The utility and necessity of lowering operational readiness is embodied in two consecutive General Assembly resolutions on the subject. First introduced in 2007 by Chile, Malaysia, New Zealand, Nigeria, Sweden and Switzerland, the resolution garnered 141 votes in favor in 2008, with 34 countries abstaining and only three voting against.¹⁶

Comprehensive Nuclear Test-Ban Treaty

After four decades of discussions and partial test ban agreements, negotiations on the CTBT were completed in 1996. Although 135 States have ratified the treaty, nine of the 44 States whose ratification is required for entry into force have yet to do so. Of the nine, three weapon-possessing States, the United States, China, and Israel, have signed but not ratified the treaty; two other weapon-possessing States, India and Pakistan, have not taken the first step of signing it; and North Korea, which may have weapons, has also not signed. The Preparatory Commission for the CTBT Organization has made great strides in developing the International Monitoring System.

Arguments that the test ban is technically inadequate are false. In a 2002 study, the U.S. National Academy of Sciences concluded that with a fully functioning monitoring system, clandestine nuclear explosions with a yield of more than one to two kilotons are detectable by technical means alone, and further found that any undetected low-yield explosions are not likely to significantly advance weapon development.¹⁷

The CTBT would help to check the spread of nuclear arms and to constrain refinement of advanced arsenals; protect the environment; and have a substantial organizational and technical infrastructure. It would be an indispensable part of the architecture of a nuclear weapons-free world. Its entry into force must remain a high priority. Also crucial is maintenance of the moratorium on nuclear test explosions that has held since the 1998 tests by India and Pakistan and continued support for the Preparatory Commission.

Proposals to “modernize” nuclear arsenals are contrary to a central purpose of the CTBT; the test ban aims to advance not only non-proliferation but also disarmament. Moreover NPT commitments found in the Practical Steps to achieve a diminishing role for nuclear weapons in security policies could also be undermined. Further developments, which can be characterized as vertical proliferation (even if numbers go down while “modernization” and reliability and

¹⁶ GA/63/41. Text of the resolution, as well as voting records and explanations of votes in the First Committee are available at: <http://www.reachingcriticalwill.org/political/1com/1com08/resolutions.html>

¹⁷ Committee on Technical Issues Related to Ratification of the Comprehensive Nuclear Test Ban Treaty, National Academy of Sciences, *Technical Issues Related to the Comprehensive Nuclear Test Ban Treaty* (Washington: National Academy Press, 2002). Access online at <http://newton.nap.edu/catalog/10471.html>.

accuracy is improved) could lead to a resumption of testing to gain confidence in the performance of new or modified warheads. The prestigious Weapons of Mass Destruction Commission stated: “If research on nuclear weapons is continued, modifications should only be for purposes of safety and security – and demonstrably so.”¹⁸

While the U.S. proposal for a “Reliable Replacement Warhead” (RRW) currently seems off the table, any similar “modernization” of the weapons systems suggests that deterrence (and thus nuclear weapons) is regarded as a policy in perpetuity. The “modernization” task must be to find ways of strengthening the architecture of disarmament – dismantlement and verification processes for example. So-called “modernization” should never be used as a *quid pro quo* for achieving votes to ratify a test ban.

Nuclear Weapons States’ “modernization” programs are intended to and will result in perpetuating and possibly extending existing military capabilities. They are not premised on reducing the scope of the mission of nuclear arsenals to only being a deterrent against the use of an adversary’s arsenal. Increased targeting certainty and extent of yield are not needed for an existential deterrent posture, nor are such plans really part of responsible stewardship. These plans are focused on weapons improvements. Plans and preparations for the improvement of nuclear forces are contrary to the obligation to work in good faith for their elimination and undermine the persuasive capacity of non-proliferation efforts.

The present arguments about improving accuracy and reliability are red herrings. There is no country which would risk using nuclear weapons against the United States based on the belief that the U.S. arsenal lacks adequate accuracy and predictability. This truth will continue until we get to extremely low numbers.

If the U.S. travels down a path of “modernization”, other States will surely follow. Of course, the U.S. could tell the world that its program is benign and designed to allow fewer weapons, even, safer weapons. But would it trust others who “modernize” to have the same goals? Would it want to intrusively verify the nature of the intentions of other states? Would the U.S. accept the intrusive verification of its weapons programs to prove its intentions? What agency is there to conduct these verifications?

Those who would hold up ratification of the test ban until there is a commitment to “improve” the existing arsenal are actually undermining the very purpose of the test ban and risking setting back progress on non-proliferation and disarmament by again placing confidence in U.S. commitments to disarmament into question.

A diminishing role of nuclear weapons in security policies and strengthened assurances of non-use of nuclear weapons against Non-Nuclear Weapons States

The 2000 NPT Review Conference rightly and wisely recognized that reducing the role of nuclear weapons in security postures makes the world safer now and facilitates progress in reduction and elimination of nuclear arsenals. With the exception of China, which has maintained its existing policy of no first use, none of the Nuclear Weapons States has complied with this commitment. France has signaled that nuclear weapons could be used against a state responsible

¹⁸ *Weapons of Terror* at 99.

for a large-scale terrorist attack on France.¹⁹ The United States claims to be in compliance with the commitment due to development of non-nuclear means for striking enemy targets and defending against attacks (e.g., anti-missile systems). However, the increased emphasis in recent years on options for use of nuclear weapons in a widening range of circumstances has made nonsense of this claim.

The 2001 Department of Defense Nuclear Posture Review (NPR) states that nuclear weapons will be “integrated with new non-nuclear strategic capabilities” including advanced conventional precision-guided munitions,²⁰ suggesting a view of nuclear weapons as “simply another weapon.”²¹ It plans for an enlarged range of circumstances under which nuclear weapons could be used, notably against non-nuclear attacks or threats. It refers to contingency planning for use of nuclear weapons against Russia, China, North Korea, Iraq, Iran, Syria, and Libya, and identifies possible “immediate contingencies” requiring U.S. nuclear use including “a North Korean attack on South Korea, or a military confrontation over the status of Taiwan.” The NPR also states that nuclear weapons “could be employed against targets able to withstand non-nuclear attack, (for example, deep underground bunkers or bio-weapon facilities),” and contemplates their use in response to a biological or chemical attack.²² Finally, the NPR refers to nuclear use in response to “surprising military developments” and “unexpected contingencies.”²³ Those new catch-all categories are virtually without limit. That is why explicit rejection of the Bush Administrations policies will be met with enthusiasm.

The NPR was reinforced in December 2002 by a presidentially approved document, the National Strategy to Combat Weapons of Mass Destruction. It states that the United States “reserves the right to respond with overwhelming force - including through resort to all options - to the use of WMD [weapons of mass destruction] against the United States” and its “friends and allies.”²⁴ The reference to “all of our options” is an invocation of the nuclear option. The document also identifies preemptive military action as one means of responding to states’ acquisition of NBC weapons or capabilities, and does not exclude U.S. use of nuclear weapons in a preemptive attack. Subsequent military planning documents repeat and elaborate the formulations found in the NPR, with allusions to the option of nuclear preemptive use, and state plainly, as the National Strategy had implicitly, that nuclear weapons may be used in response to a chemical or biological attack.²⁵

¹⁹ In a January 19, 2006 speech, President Jacques Chirac said: “[N]uclear deterrence is not intended to deter fanatical terrorists. Yet, the leaders of States who would use terrorist means against us, as well as those who would consider using, in one way or another, weapons of mass destruction, must understand that they would lay themselves open to a firm and adapted response on our part. And this response could be a conventional one. It could also be of a different kind.” Online at <http://www.acronym.org.uk/docs/0601/doc06.htm>.

²⁰ “Nuclear Posture Review [Excerpts] Submitted to Congress on 31 December 2001” (“NPR Excerpts”). Online at <http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>.

²¹ Joseph Cirincione, Director, Non-Proliferation Project, Carnegie Endowment for International Peace, Testimony to the Senate Committee on Foreign Relations, May 16, 2002.

²² NPR Excerpts; William M. Arkin, Commentary, “Secret Plan Outlines the Unthinkable,” *Los Angeles Times*, March 10, 2002; Walter Pincus, “U.S. Nuclear Arms Stance Modified by Policy Study,” *Washington Post*, March 23, 2002. Pincus wrote that the NPR “would give U.S. presidents the option of conducting a preemptive strike with precision-guided conventional bombs or nuclear weapons” against “hostile countries that threaten to use weapons of mass destruction.”

²³ NPR Excerpts.

²⁴ *National Strategy to Combat Weapons of Mass Destruction* (December 2002) 3.

²⁵ E.g., U.S. Department of Defense, *Strategic Deterrence Joint Operating Concept* (February 2004) 32-33. Online at http://www.dtic.mil/jointvision/sd_joc_v1.doc. “Joint Operating Concepts” are part of a set of planning documents intended “to assist in the development of enhanced joint military capabilities needed to protect and advance U.S.

Thus, far from diminishing the role of nuclear weapons in security policies, as called for by the NPT 13 steps, the United States during the Bush years expanded options for nuclear use. This point was illustrated chillingly by credible media reports that, until the Joint Chiefs of Staff insisted on their removal, U.S. civilian officials at the highest level wanted to keep nuclear use options in plans for counter-proliferation strikes on Iran.²⁶

During the Cold War, nuclear weapons were primarily publicly rationalized by the policy of mutually assured destruction, a policy paradoxically designed to ensure non-use. During the Bush Administration, there was, in rhetoric, a new emphasis on their war-fighting role. It is morally comprehensible, though not morally acceptable, certainly as a long-term policy, that nuclear weapons would be retained to prevent their use by another country. It is not morally intelligible to project the use of nuclear weapons in a wide range of circumstances, not limited to possible response to another country's nuclear use. Nor is it wise, because it may one day lead to the actual use of nuclear weapons, and because it enhances their political value, and therefore encourages their spread. Moreover, other recognized Nuclear Weapons States followed the U.S. example, as they often do. Russia, for instance, lowered the threshold for use in their 2000 National Security Concept, a reiteration of their 1997 document. In the earlier version, the policy stated that nuclear weapons could be used only in "a threat to the very existence of the Russian Federation as an independent sovereign state." In 2000, the "very existence" language was removed, thereby allowing for nuclear weapon use in any conflict in which "all other measures have been exhausted or proven effective."²⁷

The United leads by example, for better or for worse. The dynamic that it set in motion in 2002 must now be recognized fully and countered. Ambiguity is no longer an option.

One must ask at what limit is a policy of deterrence contrary to the obligation to decrease the role of nuclear weapons in security policies? Deterrence, as Judge C.E. Weeramantry analyzed in his dissenting opinion of the 1996 International Court of Justice advisory opinion on the threat or use of nuclear weapons,

"is more than the mere accumulation of weapons in a storehouse. It means the possession of weapons in a state of readiness for actual use. This means the linkage of weapons ready for immediate take off, with a command and control system geared for immediate action. It means that weapons are attached to delivery vehicles. It means that personnel are ready, night and day, to render them operational at a moment's notice. There is clearly a vast difference between weapons stocked in a warehouse and weapons so readied for immediate action.

interests." The goal is "to realize the Chairman's vision of achieving Full Spectrum Dominance by the Joint Force." *Id.* at 1.

²⁶ Seymour Hersh, "The Iran Plans: Would President Bush go to war to stop Tehran from getting the bomb?" *The New Yorker*, April 17, 2006; Peter Baker, Dafna Linzer and Thomas E. Ricks, "U.S. Is Studying Military Strike Options on Iran: Any Mix of Tact, Threats Alarms Critics," *Washington Post*, April 9, 2006; Seymour Hersh, "Last Stand: The military's problem with the president's Iran policy," *The New Yorker*, July 10, 2006.

²⁷ See: Tyson, Rhianna, ed: "The Model Nuclear Inventory: Accountability is Democracy, Transparency is Security," published by Reaching Critical Will, 2005: <http://www.reachingcriticalwill.org/about/pubs/Inventory.html>

Mere possession and deterrence are thus concepts which are clearly distinguishable from each other.”²⁸

Extended deterrence—through which countries such as the US or Russia reserves the option of nuclear retaliation against an attack (nuclear or otherwise) on an ally—has outlived its utility. Extended deterrence, which relies on the credibility of the threat to use nuclear weapons, must be replaced by a policy of existential deterrence: the only morally acceptable role for nuclear weapon is to deter their use. As we move closer to eliminating nuclear weapons entirely, this deterrence policy, too, will be eliminated and there will be no imaginably justifiable use, or threat to use, nuclear weapons at all.

With respect to the U.S., new military policy documents will be necessary to lend credibility to President Obama’s new policies and the sooner they are released the better. President Obama, along with his counterparts in the other states with nuclear weapons should task their military leaders to develop technical plans to achieve a nuclear weapons-free world. The chiefs of the nuclear weapons facilities should similarly be tasked with modernizing their disarmament apparatuses, which currently are cumbersome and painstakingly slow.²⁹ Foreign Ministries, too, should also be unambiguously instructed to advance diplomatic efforts to this end.

Disarmament as the compass point

Implementation of the above-outlined steps should take place in the context of a visible intent to achieve a nuclear weapons-free world. While these steps are valuable in and of themselves, an overarching framework of abolition gives substance to these steps by providing a moral compass point of abolition. Without such an overarching framework, no non-proliferation measure will ultimately succeed. The two-tiered nuclear apartheid world cannot sustain itself.

It is for exactly this reason that world leaders have thrown their support behind the goal of a nuclear weapons-free world. In January 2007, a group of respected statesmen from the United States—George Schultz, William Perry, Henry Kissinger and Sam Nunn—published an op/ed in the Wall Street Journal calling for the abolition of nuclear weapons through, *inter alia*, fulfillment of the steps outlined above. They reiterated their plan, drafted at a conference held at the Hoover Institute in California, in another op/ed in the same newspaper the following year.

The publication of these op/eds and the “Hoover Initiative” (as it came to be informally known) sparked a cascade of similar op/eds calling for nuclear disarmament by statesmen of equal seniority and respectability in countries all over the world.³⁰ The steps that they advocate,

²⁸ Threat or Use of Nuclear Weapons, 1996 I.C.J. at 540 (separate opinion of Judge Weeramantry). See also Granoff, Jonathan, “Nuclear Weapons, Ethics, Morals, and Law,” *Brigham Young University Law Review*, Vol. 2000, No.4, pp.1433-1437.

²⁹ According to the Princeton University-based International Panel on Fissile Materials, the rate of warhead disassembly in the United States dropped from over 11,500 per year to about 130 during the Bush administration, due mainly to insufficient focus on the initiative and resources for the Pantex plant. See: http://www.fissilematerials.org/ipfm/pages_us_en/fissile/disarmament/disarmament.php

³⁰ In the United Kingdom, former Foreign Secretaries Sir Malcolm Rifkind, Lord Hurd of Westwell and Lord Owen, along with former NATO Secretary-General Lord Robertson of Port Ellen published UK: “Start worrying and learn to ditch the bomb,” *The Times*, 30 June 2008: http://www.timesonline.co.uk/tol/comment/columnists/guest_contributors/article4237387.ece

however, while tremendously important, are not new. Indeed, these steps are exactly those agreed upon by consensus at the 2000 Review Conference.

It is worth highlighting that Secretary-General Ban Ki-moon, in his October 24 address calling for the abolition of nuclear weapons reiterated the value of these necessary steps but also offered a notably progressive, comprehensive and forward-looking five-point plan to achieve this goal. His plan would reinvigorate and bring negotiations to a much higher level, stimulate public exposure to the issues, and expand the regime to include states outside the NPT. His proposal includes:³¹

1. All states parties to the nuclear Non-Proliferation Treaty should fulfill nuclear disarmament obligations through either multiple instruments or a Nuclear Weapons Convention;
2. Nuclear weapon states should unambiguously assure non-nuclear weapon states they will not be subject to threat or use of nuclear weapons;
3. Nuclear weapon states should strengthen the "rule of law" by bringing the Comprehensive Test Ban Treaty into force and start negotiations on a fissile material treaty immediately, expand nuclear weapons-free zones, and adopt the International Atomic Energy Agency's strengthened safeguards and additional protocols;
4. Nuclear Weapons States should improve the transparency and accountability of their nuclear arsenals; and
5. Establish a ban on weaponization of space and convening by the UN General Assembly of a World Summit on disarmament, non-proliferation and terrorist use of weapons of mass destruction.

These proposals are the most substantive and thorough proclamations ever from a UN Secretary General and they are buttressed by the fact that he circulated a draft nuclear weapons convention to all Member States.. Such a convention clarifies a path that enhances the security of all, strengthens the rule of law, makes the regime universal, fulfills NPT duties and reframes in a positive manner the relationships amongst nations.³²

In Italy, former Prime Minister Massimo D'Alema, Former Foreign Affairs Minister Gianfranco Fini, former Minister of European Affairs Giorgio La Malfa and former Minister of Defense Arturo Parisi published "Towards a Nuclear Weapon Free World," in *Corriere della Sera*, 24 July 2008:

http://www.isodarco.it/courses/andalo09/doc/calogero_TowardsNFW080918.pdf

In Germany, various former ministers from a variety of political parties published Germany: *International Herald Tribune*, 9 January 2009: "Toward a Nuclear-Free World: A German View," by Helmut Schmidt, Richard von Weisäcker, Egon Bahr and Hans-Dietrich Genscher, *International Herald Tribune*, 9 January 2009.

<http://www.ihrt.com/articles/2009/01/09/opinion/edschmidt.php>

In Poland, former president Aleksander Kwaśniewski, former Prime Minister Tadeusz Mazowiecki and former President and Nobel Prize winner Lech Walesa published "The Unthinkable Becomes Thinkable: Towards the Elimination of Nuclear Weapons," published in *Gazeta Wyborcza*, 3 April 2009. English translation is available at:

http://www.wagingpeace.org/articles/2009/04/08_polish_unthinkable_weapons.php.

In Australia, former Prime Minister Malcolm Fraser, former Defence Force chief General Peter Gration, along with other former ministers and scientists, published "Imagine there's no bomb," in *The Age*, 8 April 2009, available at:

<http://www.theage.com.au/opinion/imagine-theres-no-bomb-20090407-9zj0.html>.

"The "Hoover Initiative" op/eds were published in the *Wall Street Journal* on 15 January 2008 and 4 January 2007, and are available at http://www.gsinsitute.org/gsi/newsletter/newsletter_01_21_08.html

³¹ The full text of Secretary-General Ban Ki-moon's speech, delivered on October 24, 2008, is available at:

<http://www.un.org/News/Press/docs/2008/sgsm11881.doc.htm>

³² A consortium of lawyers, engineers, scientists and physicians drafted a Model Nuclear Weapons Convention, which is contained in the book *Securing Our Survival*, available at: <http://www.icanw.org/securing-our-survival>

The NPT, while the cornerstone of the non-proliferation regime, is insufficient as a stand-alone disarmament and non-proliferation measure, hence the need for the supplementary role of the Comprehensive Test-Ban Treaty, a Fissile Materials Treaty, and the consortium of bilateral arms reduction treaties between the U.S. and Russia. A NWC would link these measures and develop additional measures to ensure the complete implementation of Article VI of the NPT, strengthening not just the NPT, but the entire global security regime based on the rule of law.³³

Conclusion

Building an effective non-proliferation/disarmament regime is complex and challenging. The underlying principle, however, is simple, and serves as a guide to the work. Nuclear weapons because of their enormous destructive capacity and indiscriminate effect are morally, legally, and practically unacceptable. Their short term utility is to prevent their use. As the weapons themselves are more of a problem than any problem they seek to solve, their elimination is logically compelling.

The late Senator Alan Cranston used to say, “Nuclear weapons are unworthy of civilization.” Perpetual nuclear apartheid – some countries have the weapons, others are forbidden to have them – is unsustainable. Both practical and moral coherence requires application of a universal standard, a golden rule: no country may possess weapons capable of inflicting such catastrophic destruction.

If we meet the challenge of implementing this rule, we will pass down to our children and grandchildren and all succeeding generations a world preserving the advances made by hundreds of previous generations, including our own. Simply advancing these principles will build international bridges where there were once walls.

³³ Alyn Ware of the International Association of Lawyers Against Nuclear Arms compares the relationship of the NPT to an NWC to that of the Geneva Gas Protocol of 1925 and the 1993 Chemical Weapons Convention: “The Geneva Gas Protocol prohibited the use of chemical weapons but provided no mechanism for implementation. Thus chemical weapons remained in the stockpiles and military doctrines of a number of countries for many years. It took the 1993 Chemical Weapons Convention to develop the mechanisms for implementing the prohibition and for providing a phased program for the elimination of existing stockpiles. Like the Geneva Gas Protocol, the NPT Article VI obligation is not self-implementing. It will require the adoption of clear prohibitions on the use, threat to use, and acquisition of nuclear weapons, as well as negotiations on the phased reduction and elimination of stockpiles, and the establishment of mechanisms to verify and ensure compliance with this.” Ware, Alyn: “A Nuclear Weapons Convention and the NPT: Diversion or Enabler?” at: http://www.gsinsitute.org/pnnd/docs/NWC_and_NPT.pdf

Appendix A

“Nuclear Weapons” from *Foreign Policy: The Agenda*.

The White House website. March 26, 2009:

http://www.whitehouse.gov/agenda/foreign_policy/ **Nuclear Weapons**

A Record of Results: The gravest danger to the American people is the threat of a terrorist attack with a nuclear weapon and the spread of nuclear weapons to dangerous regimes. Obama has taken bipartisan action to secure nuclear weapons and materials:

- He joined Senator Dick Lugar (R-In) in passing a law to help the United States and its allies detect and stop the smuggling of weapons of mass destruction throughout the world.
- He joined Senator Chuck Hagel (R-Ne) to introduce a bill that seeks to prevent nuclear terrorism, reduce global nuclear arsenals, and stop the spread of nuclear weapons.
- **Secure Loose Nuclear Materials from Terrorists:** Obama and Biden will secure all loose nuclear materials in the world within four years. While working to secure existing stockpiles of nuclear material, Obama and Biden will negotiate a verifiable global ban on the production of new nuclear weapons material. This will deny terrorists the ability to steal or buy loose nuclear materials.
- **Strengthen the Nuclear Non-Proliferation Treaty:** Obama and Biden will crack down on nuclear proliferation by strengthening the Nuclear Non-Proliferation Treaty so that countries like North Korea and Iran that break the rules will automatically face strong international sanctions.
- **Move Toward a Nuclear Free World:** Obama and Biden will set a goal of a world without nuclear weapons, and pursue it. Obama and Biden will always maintain a strong deterrent as long as nuclear weapons exist. But they will take several steps down the long road toward eliminating nuclear weapons. They will stop the development of new nuclear weapons; work with Russia to take U.S. and Russian ballistic missiles off hair trigger alert; seek dramatic reductions in U.S. and Russian stockpiles of nuclear weapons and material; and set a goal to expand the U.S.-Russian ban on intermediate-range missiles so that the agreement is global.

Appendix B

**“Statement of Senator Hillary Rodham Clinton, Nominee for Secretary of State”
Testimony before Senate Foreign Relations Committee. January 13, 2009: Pg. 8.
<http://foreign.senate.gov/testimony/2009/ClintonTestimony090113a.pdf>**

Page 8:

...To ensure our future security, we must curb the spread and use of these weapons – whether nuclear, biological, chemical, or cyber – while we take the lead in working with others to reduce current nuclear stockpiles and prevent the development and use of dangerous new weaponry.

Therefore, while defending against the threat of terrorism, we will also seize the parallel opportunity to get America back in the business of engaging other nations to reduce stockpiles of nuclear weapons. We will work with Russia to secure their agreement to extend essential monitoring and verification provisions of the START Treaty before it expires in December 2009, and we will work toward agreements for further reductions in nuclear weapons. We will also work with Russia to take U.S. and Russian missiles off hair-trigger alert, act with urgency to prevent proliferation in North Korea and Iran, secure loose nuclear weapons and materials, and shut down the market for selling them – as Senator Lugar has done for so many years.

The Non-Proliferation Treaty is the cornerstone of the non-proliferation regime, and the United States must exercise the leadership needed to shore up the regime. So, we will work with this committee and the Senate toward ratification of the Comprehensive Test Ban Treaty and reviving negotiations on a verifiable Fissile Material Cut-off Treaty.