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POLICY BRIEF

The Imperative of Preserving and Strengthening the Nuclear Non-proliferation Treaty

Jonathan Granoff
President

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Introduction

The United States was created and is sustained through a legal instrument, the Constitution. Our lives are created and sustained by a Power that is universal and beyond the boundaries of this presentation. But, the State is created by law. Hopefully, our laws and lives honor that Power by exemplifying justice.

An inherent principle of justice is that no one is above the law, and, in fact even the State is under the law. That is what is meant by the rule of law, respect of which is considered by most of the world as America's greatest strength and contribution.

Article 6 of our Constitution makes treaties the supreme law of the land. When we flaunt our treaty obligations or fail to exercise good faith efforts to fulfill them, we undermine our own identity, honor, and strength. The obligations found in the Nuclear Non-proliferation Treaty (NPT), the cornerstone of the nuclear non-proliferation regime, must be fulfilled for reasons of law, security and core American values. We must fulfill our promises and we must obey the law.

Recognition of Where We Are

The White House website lists a strong commitment by the Obama Administration to preserve and strengthen the nuclear non-proliferation regime with the goal of the elimination of nuclear weapons (See appendices). To help fulfill these aspirations, we offer an analysis of where we are and the policies that need to be moved forward.

Nearly every country in the world has accepted the NPT as a necessary legal instrument to address this threat. While simultaneously condemning the spread of nuclear weapons, this treaty sets forth a related obligation to obtain their universal elimination.

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 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 the President's aspirations 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.

Also, these steps will enhance the global cooperation required for an effective regime to counter terrorist threats posed by sub-state actors. Without credible disarmament progress, such cooperation from Non-Nuclear Weapons States which are dissatisfied with the balance of the NPT bargain is diminished. Our 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

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 – United States, Russia, United Kingdom, 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 International Atomic Energy Agency (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.”

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

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>.

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

- 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.

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.

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 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 United States 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 FMCT.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 United States-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 United States and Russian arsenals have been reduced when their potential to destroy the world remains virtually the same.

Without active United States 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 United Nations 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

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>.

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; 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 United States' 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 Nuclear Weapon States to fulfill their pledges to take practical steps toward elimination were not achieved.

All too many diplomats expressed concern that the United States 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 United States 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 created 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 will welcome United States support generally for strengthening international fora and judicial processes.

Looking Forward

Our 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 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 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.

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.

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/>

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 Commission (WMDC) 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 materials, as shown by studies this decade undertaken by the United Kingdom⁹ and the United States 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 United States-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

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

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.

elimination of their arsenals. Declarations of fissile materials contained in military stocks and warheads, as recommended by the International Panel on Fissile Materials, 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 1600 warheads ready for delivery within minutes of an order to do so, and Russia has more than 1000 warheads similarly ready for launch.¹² 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.¹³ 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.¹⁴ The United States 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."

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.

¹² 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.

¹³ 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>.

¹⁴ Bruce Blair, *Hair-Trigger Missiles Risk Catastrophic Terrorism* <http://www.cdi.org/blair/hair-trigger-dangers.cfm>

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.¹⁵

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 ten, 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 United States 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.¹⁶

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

¹⁵ 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>

¹⁶ 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>.

numbers go down while “modernization” and reliability and accuracy is improved) could lead to a resumption of testing to gain confidence in the performance of new or modified warheads. The prestigious WMDC stated: “If research on nuclear weapons is continued, modifications should only be for purposes of safety and security – and demonstrably so.”¹⁷

While the United States' proposal for a “Reliable Replacement Warhead” 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 United States arsenal lacks adequate accuracy and predictability. This truth will continue until we get to extremely low numbers.

If the United States travels down a path of “modernization”, other States will surely follow. Of course, we will tell the world that our program is benign and designed to allow fewer weapons, even, safer weapons. But would we trust others who “modernize” to have the same goals? Would we want to intrusively verify the nature of their intentions? Would we accept their verification of ours? 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

¹⁷ *Weapons of Terror* at 99.

disarmament by again placing confidence in United States 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 for a large-scale terrorist attack on France.¹⁸ 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,¹⁹ suggesting a view of nuclear weapons as “simply another weapon.”²⁰ 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 United States 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.²¹ Finally, the NPR refers to nuclear use in response to

¹⁸ 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>.

¹⁹ “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>.

²⁰ Joseph Cirincione, Director, Non-Proliferation Project, Carnegie Endowment for International Peace, Testimony to the Senate Committee on Foreign Relations, May 16, 2002.

²¹ 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.”

“surprising military developments” and “unexpected contingencies.”²² 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 of our options - to the use of WMD [weapons of mass destruction] against the United States” and its “friends and allies.”²³ 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 nuclear/biological/chemical (NBC) weapons or capabilities, and does not exclude United States 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.²⁴

New military documents will be necessary to lend credibility to President Obama’s new policies and the sooner they are released the better.

There is a history of disharmony between military policy and diplomatic statements. Despite NPT commitments, even in the 1990s, the United States nuclear establishment sought to establish new missions in the aftermath of the Cold War with references to options for use of nuclear weapons in “counterproliferation” missions in response to biological, chemical, and nuclear weapons use and capabilities surfaced in a variety of governmental settings.²⁵ However, the statements of the Bush

²² NPR Excerpts.

²³ *National Strategy to Combat Weapons of Mass Destruction* (December 2002) 3.

²⁴ 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. interests.” The goal is “to realize the Chairman’s vision of achieving Full Spectrum Dominance by the Joint Force.” *Id.* at 1.

²⁵ “The Role of Nuclear Weapons in the New World Order,” Briefing by Thomas C. Reed, Chairman of the Joint Strategic Target Planning Staff Strategic Advisory Group Deterrence Study Group, October 10, 1991, p.8; Department of the Navy, Office of the Deputy Chief of Naval Operations for Plans, Policy and Operations, *Stratplan 2010 Phase II, Final Report* (June 1992), V.I, pp.92-93, obtained through the Freedom of Information Act by the Greenpeace Nuclear Free Seas program, 1994; United States Joint Chiefs of Staff, *Doctrine for Joint Theater Nuclear Operations*, Joint Pub 3-12.1 (February 1996), pp. viii, I-3; White House, Press Briefing by Robert Bell, April 11, 1996, cited in George Bunn, “The Legal Status of U.S. Negative Security Assurances to Non-Nuclear Weapon States,” *The Non-proliferation Review* (Spring-Summer 1997) 1, at 11, fn. 116; Robert Bell, “Strategic Agreements and the CTB Treaty: Striking the Right Balance”, 28 *Arms Control Today* (No. 1, January/February 1998) 3, at 6, 9; R. Jeffrey Smith, “Clinton Directive Changes Strategy On Nuclear Arms,” *Washington Post*, December 7, 1997; Edward Warner III, Assistant Secretary of Defense (Strategy and Threat Reduction), prepared statement before the Strategic Forces Subcommittee, Senate Armed Services Committee, Hearing on Nuclear Deterrence, March 31, 1998, at 9, quoted in J. Medalia, “Nuclear Weapons Production Capability Issues,” Congressional Research Service

Administration that have set America's credibility back so far are different in three important respects. First, authoritativeness was heightened by a presidential signature on a public document in the case of the National Strategy, and by a Defense Secretary's signature in the case of the Nuclear Posture Review. Second, ambiguity was lessened and effectively removed about whether the United States maintains the option of a nuclear response to use of chemical and biological weapons as well as nuclear weapons, and the possibility of nuclear preemptive was given a higher profile. Third, the NPR's reference to "surprising military developments" significantly widened, at least theoretically, the circumstances for United States nuclear use.

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, United States 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 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 United States 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

Report to Congress (June 1998), at CRS-14; Stephen I. Schwartz, "Miscalculated Ambiguity: U.S. Policy on the Use and Threat of Use of Nuclear Weapons," *Disarmament Diplomacy* (February 1998, No. 23) 10, at 11, available at www.acronym.org.uk; "Nuclear Operations," Air Force Doctrine Document 2-1.5 (15 July 1998), at 8-9. The first three items are cited and discussed in Andrew Lichterman, *Western States Information Bulletin, Sliding Towards The Brink: More Useable Nuclear Weapons and the Dangerous Illusions of High-Tech War* (March 2003) 8-9, online at <http://wslfweb.org/docs/nucpreppdf.pdf>.

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.

weapon use in any conflict in which “all other measures have been exhausted or proven effective.”²⁷

The United States leads by example, for better or for worse. The dynamic that we set in motion in 2002 must now be recognized fully and countered.

The United States and Russia should therefore reaffirm the assurances of non-use of nuclear weapons previously given to NPT states parties which have renounced the possession of nuclear arms, and support rather than oppose codification of the assurances in a treaty. The logic is unassailable; countries that have foresworn nuclear weapons are entitled to guarantees of non-use of the weapons against them. Furthermore, the United and Russia should adopt a declared policy of no first use of nuclear weapons.

Conclusion: Disarmament as the compass point

Implementation of the above-outlined priority should take place in the context of a visible intent to achieve a nuclear weapons-free world. The priority measures are valuable in and of themselves. They decrease risks of use, diminish the access of terrorists to catastrophic weapons and materials to build them, raise barriers to acquisition by additional states, and generate support for strengthening the non-proliferation side of the regime and resolving regional crises. Moreover, the measures pass key tests: they enhance security generally; they do not diminish the security of any state; they reinforce the NPT and enhance the rule of law; they make the world safer now; they move the world towards elimination of nuclear weapons.

To conclude: 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

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>

coherence requires application of a universal standard, a golden rule: no country may possess weapons capable of inflicting catastrophic, city-

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.

Appendix A

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 our 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 United States and Russian ballistic missiles off hair trigger alert; seek dramatic reductions in United States and Russian stockpiles of nuclear weapons and material; and set a goal to expand the United States-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> :**

...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 United States 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 Cutoff Treaty.