

B. PART TWO: Nuclear Disarmament

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In assessing compliance with the Article VI requirement of good-faith negotiations on effective measures relating to nuclear disarmament, the practical steps adopted in 2000 are an indispensable guide. The principles animating those steps of verification, transparency, and irreversibility are essential to states' participation in reduction of nuclear forces to low levels and undoubtedly to their elimination.

While the 2000 references to the ABM Treaty and to the START process have been mooted by US actions, on the whole - and certainly with respect to the principles - the practical steps remain as relevant today as they were five years ago. They should not be devalued by calling them "only political."

First, states should not go back on their freely given word, whatever the form.

Second, under Article 31 of the Vienna Convention on the Law of Treaties, subsequent agreements as well as practice have a crucial role in interpretation. Here the practical steps are a consensus agreement on the application of Article VI. Indeed, the 2000 Final Document states that "the Conference *agrees* on the following practical steps for the systematic and progressive efforts to implement Article VI [and the 1995 Principles and Objectives]." The practical steps are thus an essential guide to interpretation of Article

Security Administration, Before the Strategic Forces Subcommittee of the House Armed Services Committee, March 2, 2005.

³⁹ US Department of Energy, National Nuclear Security Administration, "Requirements for a Modern Pit Facility: Summary," Report to Congressional Defense Committees Requested by the United States Congress in Public Law 108-375, Ronald W. Reagan National Defense Authorization Act, January 2005, p. 4.

⁴⁰ Robert S. Norris and Hans M. Kristensen, "Dismantling US nuclear warheads," NRDC: Nuclear Notebook in Bulletin of the Atomic Scientists, January/February 2004 pp. 72-74 (vol. 60, no. 01)

⁴¹ Alliance for Nuclear Accountability, "Top Ten Department of Energy Radioactive Pork Projects in the 2005 Budget," September 2004, p. 13, www.ananuclear.org/topten.html

⁴² US Department of Energy, National Nuclear Security Administration, *Strategic Plan*, November 2004, p.20

VI. They identify criteria and principles that are so tightly connected to the core meaning of Article VI as to constitute requirements for compliance with the NPT.⁴³

A final point: the practical steps have added weight because they are inextricably bound up with the 1995 decision to extend the treaty indefinitely, a decision that is both legally binding and of supreme practical importance. They spell out the "systematic and progressive efforts" committed to in the Principles and Objectives adopted in connection with the extension decision.

We do not propose now to do a comprehensive analysis of how the nuclear weapon states are failing to meet the 2000 commitments. It does bear mention that probably the most important instance of backsliding is the absence of provisions for transparency, verification, and irreversibility in the US-Russian Moscow Treaty. While monitoring mechanisms under START I may provide a means of verification, they would not fulfill the principle of irreversibility. Also, START I is set to expire in 2009. It also must be noted that the nuclear weapon states have failed to agree on the establishment of a body to deal with nuclear disarmament in the Conference on Disarmament. And it is worth dwelling on two of the commitments whose implementation is essential to progress towards elimination of nuclear arsenals.

First is the commitment to *concrete agreed measures to further reduce the operational status of nuclear weapons systems*: This commitment goes to the core of the nuclear dilemma. In particular, so long as the United States and Russia maintain many hundreds of nuclear warheads ready for immediate use and contend that this posture is essential to their security, implementation of the entire nuclear arms control/disarmament program is fraught with difficulty.

It is sometimes said that problems are solved when they are no longer problems. In that vein, massive nuclear arsenals will not be reduced and eliminated until the nuclear weapons states stop relying on them in an operational sense.

Since 2000 there has been little progress in this area. One could point to the Moscow Treaty. However, the achievement of levels of less than 2200 deployed strategic warheads in or before 2012 will not fundamentally alter the preparedness of each state to initiate immediately a large-scale nuclear attack.

Non-governmental expert analysis of the mechanics of a stand-down of nuclear forces, often referred to as "dealerting," is ongoing. There are two dimensions: increasing assurance that no attack is underway; and decreasing the capability to immediately

⁴³ See Lawyers' Committee on Nuclear Policy, "The Thirteen Practical Steps: Legal or Political?", May 2005, online at lcnp.org/disarmament/npt/13stepspaper.htm. The paper identifies the following criteria and principles as among those stating requirements of Article VI:

- 1) The Article VI obligation is to achieve the complete elimination of nuclear weapons, as the "unequivocal undertaking" in step 6 specifies, without any precondition of comprehensive demilitarization.
- 2) The reduction and elimination of nuclear arsenals are to be accomplished pursuant to principles of verification (employed in the START process, and referred to in step 13), transparency, and irreversibility.
- 3) Cessation of the nuclear arms race at an early date and nuclear disarmament pursuant to Article VI require a diminishing role of nuclear weapons in security policies and a reduction of their operational status.
- 4) The process of nuclear disarmament must involve all NPT nuclear weapon states (which are to be engaged as soon as appropriate) and multilateral negotiations involving non-nuclear weapon states (as in Conference on Disarmament negotiations on a fissile materials treaty and a CD body to deal with nuclear disarmament).

launch an attack.⁴⁴ This Review Conference should commit the nuclear weapon states to planning and implementation of a program to stand down nuclear forces, culminating in a global stand-down by the 2010 conference.

The second commitment we highlight is 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 importance of this brilliantly framed and succinctly put commitment is self-evident. China's long-standing policy of no first use, predating 2000, is consistent. Unfortunately, China aside, since 2000 the commitment has been thoroughly ignored, as a brief review of doctrines illustrates all too convincingly:

Britain continues to retain the option of first use to defend "vital interests," as announced in 1998 and reaffirmed since then.⁴⁵

France similarly retains the option of first use in defense of vital interests that include the "free exercise of our sovereignty."⁴⁶

Russia's stance remains that set forth in its 2000 Security Concept, which states that nuclear weapons can be used "to repulse armed aggression, if all other means of resolving the crisis have been exhausted." The 2000 Concept itself regresses from the 1997 policy, which identified as the scenario for possible use of nuclear weapons "a threat to the very existence of the Russian Federation as an independent sovereign state." In 1993, Russia had abandoned its policy of renouncing first use.

The *United States* has enlarged the range of circumstances in which nuclear weapons might be used. The 2002 National Security Strategy to Combat Weapons of Mass Destruction, carrying the imprimatur of President Bush, removed ambiguity from previous US policy. It states that the United States will respond with "overwhelming force" - a phrase invoking a nuclear option - to chemical and biological attacks. The Defense Department's classified 2001 Nuclear Posture Review 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 refers to use of nuclear weapons in response to "surprising military developments" and "unexpected contingencies."⁴⁷

Lest anyone think that the leaked Defense Department document is exceptional in its identification of a pervasive role for nuclear weapons, whether actually detonated or not, in US military operations, consider these excerpts from the Defense Department's February 2004 *Strategic Deterrence Joint Operating Concept*:

⁴⁴ Possible steps are illustrated by a 2004 Rand Corporation study, *Beyond the Nuclear Shadow*, supported by the Nuclear Threat Initiative: assistance to Russia for its early-warning radars or satellites; creation of a US-Russian early-warning system using sensors placed outside missile silos; standing down nuclear forces to be reduced under the Moscow Treaty; restrictions on the operating area of nuclear-armed submarines; removal of counterforce capable warheads (e.g., Trident W-88 warheads); reduction of launch readiness of ICBMs; reduction of launch readiness of all nuclear forces; installation of destruct-after-launch mechanisms on ballistic missiles; and elimination of doctrines of launch on warning and rapid counterforce strikes.

⁴⁵ Ministry of Defence, July 1998, Strategic Defence Review: White Paper, www.mod.uk/issues/sdr/index.htm; Ministry of Defence, July 2002, Strategic Defence Review: A New Chapter, www.mod.uk/issues/sdr/newchapter.htm ("The UK's nuclear weapons have a continuing use as a means of deterring major strategic military threats, and they have a continuing role in guaranteeing the ultimate security of the UK."); Ministry of Defence, December 2003, Delivering Security in a Changing World: Defence White Paper, www.mod.uk/linked_files/publications/whitepaper2003/volume1.pdf ("The Government's policy on nuclear weapons remains as set out in the SDR.")

⁴⁶ Tertrais, 2004.

⁴⁷ "Nuclear Posture Review [Excerpts] Submitted to Congress on 31 December 2001. 8 January 2002, Nuclear Posture Review Report." Online at www.globalsecurity.org/wmd/library/policy/dod/npr.htm.

... US nuclear forces contribute uniquely and fundamentally to strategic deterrence--through their ability to impose costs and deny benefits to an adversary in an exceedingly rapid and devastating manner no adversary can counter.

Nuclear weapons provide the President with the ultimate means to terminate conflict promptly on terms favorable to the United States. They cast a lengthy shadow over a rational adversary's decision calculus when considering coercion, aggression, WMD employment, and escalatory courses of action. Nuclear weapons threaten destruction of an adversary's most highly valued assets, including adversary WMD/E [weapons of mass destruction / effect] capabilities, critical industries, key resources, and means of political organization and control (including the adversary leadership itself). This includes destruction of targets otherwise invulnerable to conventional attack, e.g., hard and deeply buried facilities, "location uncertainty" targets, etc. Nuclear weapons reduce an adversary's confidence in their ability to control wartime escalation.

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The use (or threatened use) of nuclear weapons can also reestablish deterrence of further adversary WMD employment. Alternatively, nuclear weapons can constrain an adversary's WMD employment through US counterforce strikes aimed at destroying adversary escalatory options....

Although advances in conventional kinetic and non-kinetic means [e.g., computer network attack (CAN), High Energy Radio Frequency (HERF), directed energy (DE), etc.] by 2015 will undoubtedly supplement US nuclear capabilities to achieve these effects, nuclear weapons that are reliable, accurate, and flexible will retain a qualitative advantage in their ability to demonstrate US resolve on the world stage. These capabilities should be further enhanced by improving our capability to integrate nuclear and non-nuclear strike operations. Providing the President an enhanced range of options for both limiting collateral damage and denying adversaries sanctuary from attack will increase the credibility of US nuclear threats, thus enhancing deterrence and making the actual use of nuclear weapons less likely. Additionally, nuclear weapons allow the US to rapidly accomplish the wholesale disruption of an adversary nation-state with limited US national resources. While the legacy force was well suited for successful deterrence throughout the Cold War, an enhanced nuclear arsenal will remain a vital component of strategic deterrence in the foreseeable security environment.⁴⁸

A pithier explanation was provided by the commander of the US Air Force Space Command in October 2004, who stated:

⁴⁸ US Department of Defense, *Strategic Deterrence Joint Operating Concept*, February 2004, pp. 32-33, 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 US interests." The goal is "to realize the Chairman's vision of achieving Full Spectrum Dominance by the Joint Force." *Id.* at p. 1.

The legacy of our ICBMs is strategic deterrence, but today, they also provide operational deterrence...Gen Jumper calls it "Top cover for the AEFs [Air Expeditionary Forces]." Our ICBMs deter our enemies from unacceptable escalation of combat...providing an "incentive" against regimes that may consider using weapons of mass destruction...such as chemical weapons...against US or allied forces. To put a bumper sticker on it, "our ICBMs make our adversaries think twice!"⁴⁹

Relying on the history of non-use in war since the US atomic bombings of Japanese cities, the optimist thinks that the risk is vanishingly small that political leaders, in the United States or other nuclear-armed states, will act on these doctrines of use of nuclear weapons. The pessimist thinks that circumstances change, and that, as the stock market warning says, past performance is no guarantee of future results. But the point of a "diminishing role for nuclear weapons in security policies," and more largely of the unequivocal undertaking and Article VI, is that the peoples of the world do not wish to run the risk, whatever its magnitude. Nor do they wish to live in a world in which supposed security is made dependent on a morally repugnant nuclear balance of terror.