

LAWYERS ALLIANCE FOR WORLD SECURITY
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THE FUTURE OF THE
NUCLEAR NON-PROLIFERATION
TREATY REGIME

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LAWS

Introduction

The threat of the spread of nuclear weapons to additional countries is the most important issue for United States and international security now and in the foreseeable future. As President Chirac of France, Prime Minister Blair of the United Kingdom and Chancellor Schroeder of Germany noted in an October 8th *New York Times* op-ed, "As we look to the next century, our greatest concern is proliferation of weapons of mass destruction, and chiefly nuclear proliferation. We have to face the stark truth that nuclear proliferation remains the major threat to world safety." If the next century is to be more secure than the last, efforts must be made to free the world from the dangers associated with the proliferation of nuclear weapons. Without sincere efforts by the international community to strengthen structures designed to prevent proliferation, principally the Nuclear Non-Proliferation Treaty (NPT) regime which since 1970 has been the cornerstone of these structures, international efforts are sure to fail.

The Nuclear Non-Proliferation Treaty

Even before the first atomic bomb was tested in July 1945, policymakers, scientists, and international security experts alike have been concerned with the dangers of the acquisition and use of nuclear weapons. Indeed, the first resolution adopted by the United Nations called for the elimination of nuclear weapons, a commitment the United Nations maintains even today. Throughout the 1940s and 50s the United States and the United Nations sought to develop programs that would allow states to benefit from the peaceful applications of nuclear technology without developing

military technologies. The Baruch Plan and President Eisenhower's Atoms for Peace program are among the examples of efforts initiated under the assumption that states could be persuaded to forgo nuclear weapons by giving them assistance in developing nuclear energy. This approach proved flawed, and by the early 1960s some Kennedy Administration experts were predicting that the world would be inhabited by 25 to 30 states with nuclear weapons fully integrated into their military arsenals by the end of the following decade. The United States and other nations thus set about to strengthen international arrangements to attempt to prevent this from happening. The Nuclear Non-Proliferation Treaty (NPT) was the principal response.

The NPT was signed in 1968 and entered into force in 1970. It committed the now 181 non-nuclear weapon states parties to the Treaty never to develop or otherwise acquire nuclear weapons and to submit to international safeguards intended to verify compliance with this commitment. In exchange, these 181 states were promised unfettered access to peaceful nuclear technologies and the five nuclear weapon states – the United States, Soviet Union (now Russia), United Kingdom, France, and China – pledged in NPT Article VI to engage in disarmament negotiations aimed at the ultimate elimination of their nuclear arsenals. This central bargain – non-proliferation in exchange for eventual nuclear disarmament – is the foundation upon which the NPT regime rests.

Since the Treaty had been given a twenty-five year life span with an option for permanent, incremental or no extension thereafter, the international community had to agree in 1995 to either extend the

Treaty indefinitely, something the United States very much wanted, or extend it for a fixed period, which could have led to its eventual termination. Having led U.S. efforts to secure indefinite extension of the Treaty in 1994 and 1995, I can tell you that a significant number of key non-nuclear weapon states were dissatisfied with the progress made by the nuclear weapon states in fulfilling their Article VI side of the bargain. Many of these non-nuclear weapon states were reluctant to accept a permanent NPT for fear of being locked into an inherently discriminatory regime. While the NPT explicitly does not legitimize the arsenals of the nuclear weapon states, many were concerned that a permanent NPT would remove the incentive for those states to reduce their arsenals.

In order to ameliorate this concern, the NPT States Parties negotiated an associated consensus agreement called the Statement of Principles and Objectives that was intended to strengthen the regime and, in effect, at least politically if not legally, condition the extension of the Treaty. Among the commitments included in the Statement of Principles and Objectives were the completion of the Comprehensive Nuclear Test Ban Treaty (CTBT), always a priority for the non-nuclear weapon states, by the end of 1996, expansion of the nuclear weapon free zone process and vigorous efforts to pursue reductions in the number of nuclear weapons retaining the objective of their eventual elimination. The reaffirmation of the NPT central bargain at that time and assurances by the nuclear weapon states that they would not use nuclear weapons against NPT non-nuclear weapon states pursuant to commitments referred to as

Negative Security Assurances, were also critical components of the NPT extension.

The Current Situation

Today, with the first enhanced NPT Review Conference around the corner in April 2000, the NPT regime is in deep trouble. The rejection of the CTBT by the U.S. Senate on October 13, 1999, efforts to amend the Antiballistic Missile (ABM) Treaty to allow deployment of a national missile defense, the stalled START process, the military coup in Pakistan – the first in a nuclear-equipped nation – and last year's nuclear tests by India and Pakistan underscore the perilous condition of the Treaty regime. Unfortunately, the current U.S. Senate, instead of leading U.S. and international arms control and non-proliferation efforts, seems intent on reversing the progress made over the last two decades. One need look no further than the CTBT and the ABM Treaty to determine that congressional attitudes are not favorable to arms control and disarmament.

Presidents Clinton and Yeltsin have both referred to the ABM Treaty as the "cornerstone of international arms limitation," but some in Congress are seeking deployment of national missile defense systems that would seemingly require U.S. violation or abrogation of the Treaty. Since 1972, the ABM Treaty has prohibited the deployment of a nationwide missile defense by either the United States or the Soviet Union (now Russia) and limited each side to one ABM deployment site with 100 interceptors. By limiting the amount of defenses either side could deploy, the ABM Treaty made the SALT limitations and START reductions of the superpower nuclear arsenals possible. If one nation could deploy an effective

nationwide defense against a missile attack, the other would be forced to build larger arsenals in order to overwhelm those defenses and thereby maintain a credible deterrent. Moreover, if one nation had an effective nationwide defense, it might be more inclined to initiate a first strike with the expectation that the remaining arsenal of the undefended opponent would be insufficient to penetrate the defensive shield. Either of these situations would have been destabilizing and certainly would have rendered further arms control impossible.

With the report of the Rumsfeld Commission last year, many in Congress assert that they are concerned anew with the alleged missile threat from so-called "rogue states" such as Iran, Iraq, and North Korea. They argue that the ABM Treaty is a relic of the Cold War and that U.S. national security requires the deployment of a limited national missile defense system against the threat of missile attacks from such nations regardless of the ABM Treaty. For its part, understanding the politics of this issue, the Clinton Administration has pursued discussions with the Russians intended to attain agreement from Moscow to negotiate amendments to the ABM Treaty that would allow the deployment of a limited defense.

The link between strategic offensive and defensive systems remains as critical today as it was during the Cold War. Last week, in a letter to President Clinton, President Yeltsin remarked that unilateral U.S. deployment of a NMD system "would have extremely dangerous consequences for the entire arms control process." Russian Defense Minister Sergeyev, too, has stated publicly that unilateral U.S.

NMD deployment would do "unacceptable damage to the reduction of strategic offensive weapons." China and France have similarly indicated that such deployments, even those designed to ward off attack from so-called rogue states, would cause them to significantly expand rather than contract their strategic nuclear arsenals. In fact, an all out nuclear arms race among the United States, Russia and China conceivably could be the result. Needless to say, this would be highly damaging to the NPT regime. If the NPT regime is to be preserved, we must maintain the viability of the ABM Treaty and continue the START nuclear arms reduction process.

This Congress demonstrated its apparent disinterest in non-proliferation and disarmament by subjugating the CTBT to partisan politics and, in the process, delivering another blow to the non-proliferation regime. The actions of the United States are watched around the world, and the rejection of the CTBT by the U.S. Senate earlier this month was no exception. When the Senate was asked to take the lead in demonstrating the U.S. commitment to nuclear non-proliferation, it instead demonstrated its commitment to maintaining a large nuclear arsenal, which of course sends a counterproductive message to non-nuclear weapon states around the world.

The relationship between the test ban and the nuclear non-proliferation regime is an explicit one. The Preamble of the NPT expresses the desire of the states parties, now 186 nations, to see the completion of a comprehensive test ban. As was stated above, the Statement of Principles and Objectives adopted in 1995 specifically called for the completion of the test ban by

the end of 1996. This was the only objective given a specific timeline for achievement, a fact that underscores the importance of the test ban to the health of the NPT regime. Indeed, non-nuclear weapon states have long regarded the CTBT as a litmus test as to whether the nuclear weapon states would live up to their half of the basic NPT bargain. While the CTBT was completed in 1996 as the Statement of Principles and Objectives required, Senate rejection of the Treaty in 1999 will be seen as an act of bad faith by a number of significant non-nuclear weapon states and could serve as a rationale for freeing them from their commitment to a permanent NPT. Senate rejection of the CTBT is tantamount to a statement to potential proliferators that, although the United States has not tested in seven years and has no intention of testing in the foreseeable future, to borrow a phrase from President Clinton, you other states have the green light.

There is a way out for the United States, however, and the first step has already been taken. Immediately after the Senate vote, President Clinton announced that the Administration would continue to observe the moratorium on nuclear testing and pursue U.S. ratification of the CTBT. Secretary Albright did the right thing in formally advising many states that under international law nations that have signed the CTBT are legally prohibited from conducting nuclear tests unless they, in effect, formally withdraw their signature. As a next step, perhaps as early as spring, a Senate resolution giving advice and consent to CTBT ratification but with "conditions" could be considered. This was done successfully with the Chemical Weapons Convention in 1997 and would be in line with actions already taken by the

President. In submitting the CTBT to the Senate, President Clinton announced a set of six "safeguards" that, if not met, would result in U.S. withdrawal from the Treaty.

For example, the President announced that if he or a future President should be informed by the Secretary of Defense or Secretary of Energy that a high level of confidence in the safety or reliability of a nuclear weapons type considered crucial to a credible deterrent could no longer be certain, the United States would exercise its right under the "supreme national interest" clause and withdraw from the Treaty. A seventh safeguard that would address one of the principal concerns expressed during the Senate debate on the Treaty – the concern that the reliability of the stockpile cannot be guaranteed beyond a period of ten years – also could be drafted and included along with the others in the resolution of advice and consent to ratification.

This condition could read as follows: "*ten years after the entry into force of the CTBT the Senate shall conduct a formal and full review of the implementation and operation of the Treaty and its impact on U.S. and Allied security. After the review, the Senate shall advise the President as to the results of this review and any recommendations it may have based on this review.*"

Such a condition could allow the United States to ratify the CTBT before the April 2000 NPT Review Conference. A formal amendment of the CTBT is of course impossible with more than 150 nations having signed it and major states such as Britain, France and Japan having already ratified it. This condition, would, however, effectively address the concern

over the ten-year question domestically for the United States.

Another important issue is that of nuclear weapon use doctrine and the role of nuclear weapons. A fundamental motivation for nuclear proliferation is the perceived prestige value of nuclear weapons and that this value is artificially elevated by outdated and inappropriate policies regarding the possible use of nuclear weapons. The 1996 Canberra Commission Report, the 1997 United States National Academy of Sciences Report and most recently the July, 1999 Tokyo Forum for Nuclear Non-Proliferation and Disarmament Report have all concluded that the only role for nuclear weapons is deterring the use of other nuclear weapons. The NATO first use option was adopted in the early days of the Cold War to offset the conventional superiority of the Warsaw Pact – both have passed into history. Rather it is NATO that has the conventional superiority in Europe and everywhere else. Nevertheless, some commentators in nuclear weapon states continue to argue for new roles for nuclear weapons such as deterring or responding to the use of chemical or biological weapons. A less overt variant of such a policy, commonly referred to as a doctrine of “calculated ambiguity” because it suggests that uncertainty in the minds of potential aggressors about the nature of response to a chemical or biological attack would deter the use of these weapons, is also advocated by some.

Supporters of the “calculated ambiguity” concept suggest that veiled threats to use nuclear weapons in response to a chemical weapon attack deterred the use of chemical weapons by Saddam Hussein during the

Persian Gulf War. While we will likely never know if this is true, revelations in memoirs by senior policymakers that the United States was bluffing and never had any intention of using nuclear weapons, even in response to a CBW attack, have ensured that “calculated ambiguity” probably will not be effective in the future. Rather, it is likely that such a bluff would be called, with pressure on the United States and NATO to actually use nuclear weapons, a potentially disastrous outcome.

At the first United Nations Special Conference on Disarmament in 1978, then-U.S. Secretary of State Cyrus Vance articulated the first official U.S. pledge of non-use of nuclear weapons against NPT non-nuclear-weapon states (referred to as a negative security assurance). The United Kingdom and the Soviet Union made similar pledges. During negotiations to extend the NPT in 1995, the UN Security Council adopted Resolution 984, which acknowledged formal commitments made by the nuclear-weapon states to refrain from using nuclear weapons against non-nuclear-weapon states parties to the NPT unless such a state were to attack in alliance with another nuclear-weapon state, holdover language from the Cold War. Additionally, in agreeing to the appropriate protocols of three nuclear weapon free zone agreements, the nuclear-weapon states have pledged not to use or threaten to use nuclear weapons against the more than 110 non-nuclear-weapon states that are members of such regimes. The Negative Security Assurances undertaken in association with the 1995 extension of the NPT which have been recognized by the International Court of Justice (the World Court) as legally binding, just like the Protocols to the nuclear weapon free zone treaties, were

central to the NPT extension and are essential to maintaining non-nuclear-weapon state confidence in the NPT regime. None of these commitments contain exceptions that would allow the use of nuclear weapons in response to an attack with chemical and/or biological weapons.

Instead of relying on a policy of "calculated ambiguity," the United States and NATO should declare that they would under no circumstances introduce nuclear weapons into a future conflict and agree instead to rely on their overwhelming conventional superiority to deter or respond to the use of chemical and biological weapons. Russia, though it lacks the conventional military strength of the United States and NATO, has made the same NPT-related negative security assurance and thus should also adopt a no first use policy. China, on the other hand, has maintained a no first use policy since its first nuclear test in 1964. Such actions would be consistent with the recommendations of the Canberra Commission, the Tokyo Forum and the United States National Academy of Sciences, and would reduce significantly the perceived value of nuclear weapons.

Recent challenges to the regime – nuclear and missile proliferation in South Asia, missile tests by North Korea, and continued Iraqi recalcitrance – demonstrate that the prestige value of nuclear weapons remains too high. An important component of efforts to remove the demand for nuclear weapons among would-be proliferators is reducing the perceived value of these weapons. After India conducted its nuclear tests in May 1998, its Prime Minister declared that India was a big country now that it had

nuclear weapons. Nuclear weapons are of limited realistic military use, but statements such as this reflect the political attractiveness of nuclear weapons. The nuclear weapon states must take steps to *strengthen the NPT regime and signal to would-be proliferators that nuclear weapons do not add to the political status of a nation, and nuclear weapon state and NATO adoption of no first use of nuclear weapons policies would be an important step toward accomplishing this.*

Progress on this issue, however, like others, has been disappointing. Paragraph 32 of the April NATO Summit Communiqué provided that at the December NATO Ministerial a formal Review of nuclear weapon issues would be established. The Foreign Minister of Canada Mr. Lloyd Axworthy, among others, assumed that this meant the NATO nuclear weapon use doctrine would be included in the Review. At a news conference on April 24, 1999 Minister Axworthy confirmed the willingness of NATO "to have a review initiated" of its nuclear weapon policies and added that "It's a message that the [Canadian] Prime Minister took [to] certain NATO leaders...I think we have now gained an acknowledgement that such a review would be appropriate and that there would be directions to the NATO Council to start the mechanics of bringing that about."

However, due to resistance by the three NATO nuclear weapon states, there is a real question as to whether nuclear weapon use doctrine will even be on the agenda of the Review. Not to even include this issue on the agenda in December would be another serious blow to the April 2000 NPT Review Conference and to the Treaty regime generally.

nations party to nuclear weapon free zone agreements for example, may determine that they no longer benefit from their membership in the NPT regime. States such as Mexico, South Africa, Brazil, Argentina, the Philippines, Malaysia and New Zealand could become convinced that the nuclear weapon states, with all of the problems they have created – CTBT rejection, the frozen START process, and possible unilateral national missile defenses to name a few – are not truly committed to non-proliferation and disarmament. These states, which, to reiterate, are not proliferation risks but frustrated disarmers, may decide to withdraw from the NPT and pursue a non-discriminatory convention banning nuclear weapons instead.

While the withdrawal of these states would not directly be proliferative, it would seriously, if not fatally, weaken the NPT regime and thus inhibit efforts to convince would-be proliferators that continued adherence to the non-proliferation norms established by the NPT regime is the appropriate path. The nuclear weapon states would, of course, not subscribe in the foreseeable future to a nuclear weapons convention. In both of these cases, the non-proliferation regime would be destroyed and the seeds of widespread proliferation would have been sowed.

An Ounce of Prevention

I have painted a grim picture of the future of the non-proliferation regime, but these outcomes are not cast in stone. Responsible action by the nuclear weapon states in the short term could help to preserve the NPT for the long term. For instance, it may be possible to hold the line at the April 2000 Review Conference

with the adoption of a consensus position that there will be no threats of any damage to the NPT regime until the 2005 Review Conference in exchange for several commitments from the nuclear weapon states. These could include good faith efforts to:

- Bring the CTBT into force;
- Universalize no first use policies among the nuclear weapon states;
- Maintain the viability of the ABM Treaty;
- Pursue a reduction process of the U.S. and Russian nuclear arsenals to a level of 1000 strategic nuclear warheads for each the United States and Russia.

The 2000 NPT Review Conference could agree that if sufficient progress is made toward fulfilling these commitments, the 2005 Conference would reaffirm the fundamental importance of international commitment to the NPT. If such progress is not made, states could be expected to withdraw from the Treaty and the NPT regime could be expected to crumble. If the NPT regime is reaffirmed at the Review Conference of 2005, the nuclear disarmament process could continue.

After 2005 the United States and Russia could agree to a limit of 500 nuclear tactical warheads for each, which could then lead to a limit of 1000 total nuclear weapons for each the United States and Russia. This in turn could lead to the establishment of a five-power nuclear disarmament process with three main objectives:

1. Reduction of U.S. and Russian nuclear arsenals to residual levels in the low 100s;

2. Reduction of the nuclear arsenals of China, France and the U.K. to levels below 100;
3. The nuclear arsenals of India, Pakistan and Israel eliminated, but with their fissile material retained on their territories under international safeguards as a hedge against a breakdown of the agreement. These three states would also agree to join the NPT as non-nuclear weapon states.

In addition, all the non-nuclear weapon states would pledge again their non-nuclear status and all the NPT parties would commit themselves to joint action – including force if necessary – against any violator. These levels would be the end point until the world has changed sufficiently to permit contemplation of the prohibition of nuclear weapons.

As I noted at the beginning of my remarks, if the next century is to be more secure than the last and the proliferation of nuclear weapons is to be prevented, the NPT regime must be maintained and strengthened. I believe that a course such as I have outlined may be the best hope for achieving this goal.

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