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### Nuclear Weapon Policy and International Law

Paul Nitze was the archetypical Cold Warrior and nuclear weapon strategist. As the author of NSC-68 commissioned by President Truman in 1950 he helped set the ground rules for the Cold War and the thermonuclear confrontation. In this Report he wrote in 1950: “In the absence of effective arms control it would appear that we had no alternative but to increase our atomic armaments as rapidly as other considerations make appropriate.” But in addition to being an outstanding national leader Paul Nitze was someone who could recognize change and respond to it. In the last op-ed that he wrote at the age of 92 in 1999 entitled “A Threat Mostly To Ourselves” he said:

"I know that the simplest and most direct answer to the problem of nuclear weapons has always been their complete elimination. My 'walk in the woods' in 1982 with the Soviet arms negotiator Yuli Kvitsinsky at least addressed this problem on a bilateral basis. Destruction of the arms did not prove feasible then but there is no good reason why it should not be carried out now."

Senator Sam Nunn in an article in the Financial Times in December 2004 pointed to the serious danger that exists as a result of the fact that fifteen years after the end of the Cold War the United States and Russia still maintain, on fifteen minutes alert, long range strategic missiles equipped with immensely powerful nuclear warheads capable of devastating each other's

societies in thirty minutes. In 1995 Russia mistook the launch of a test rocket in Norway as a submarine launched nuclear missile aimed at Moscow and came within two minutes of ordering a retaliatory nuclear strike on the United States. Senator Nunn said in his article that current United States nuclear weapon policies which in effect rely on the deteriorating Russian early warning system continuing to make correct judgments as it did during the Cold War “risks an Armageddon of our own making.” Even after entry into force of the new START Treaty, hopefully at the end of this year, this condition will still exist, albeit at somewhat lower levels.

In an op-ed article published in January, 2007 in the *Wall Street Journal* by George Schultz, William Perry, Henry Kissinger and Sam Nunn (and signed on to by a number of other former senior officials in the Reagan, first Bush and Clinton Administrations) the authors contend that reliance on nuclear weapons for deterrence "is becoming increasingly hazardous and decreasingly effective" and that "unless new actions are taken, the U.S. soon will be compelled to enter a new nuclear era that will be more precarious, psychologically disorienting, and economically even more costly than was Cold War deterrence." Noting that President Ronald Reagan had called for the abolishment of "all nuclear weapons" which he considered to be "totally irrational, totally inhumane, good for nothing but killing, possibly destructive of life on earth and civilization," and that President Reagan and General Secretary Mikhail Gorbachev shared this vision, the four authors call for "reassertion of the vision of a world free of nuclear weapons and practical measures toward achieving that goal..." This op-ed article is most significant in that it represented significant elements of the U.S. national security establishment, far beyond the four distinguished authors, coming to the realization that the world has become so dangerous that nuclear weapons are a threat even to their possessors. A sequel to this article, with additional distinguished signers, was published in the *Journal* a year later. But the eventual

realization of President Reagan's dream will not be possible unless the proliferation of nuclear weapons across the world can be prevented and the instrument for doing so, the Nuclear Non-proliferation Treaty (the NPT), salvaged and strengthened.

President John F. Kennedy truly believed that there was a serious risk that nuclear weapons were destined to sweep all over the world. In March of 1963 in response to a reporter's question at a news conference, he said, "Personally, I am haunted by the feeling that by 1970 . . . there may be 10 nuclear powers instead of 4 and by 1975, 15 or 20. . . . I would regard that as the greatest possible danger and hazard." He spent much of his presidency pursuing the cause of nonproliferation.

Since the mid-twentieth century almost all American presidents have placed arms control and nonproliferation policy high on their agendas. President Eisenhower considered his failure to achieve a nuclear test ban his greatest disappointment. The Nuclear Nonproliferation Treaty, the NPT, was signed on President Johnson's watch. President Nixon oversaw the negotiation of the SALT I Agreements and the beginning of the SALT II Treaty process. The SALT II process was continued under President Ford and concluded under President Carter. President Carter also attempted to negotiate a comprehensive nuclear test ban which was finally concluded under President Clinton's leadership. President Reagan advocated the abolition of all nuclear weapons and completed the medium range nuclear missile treaty. The most successful arms control President was President George H.W. Bush. His Administration concluded four major arms control treaties during his four years as president: the START I Treaty, the START II Treaty, the Conventional Armed Forces in Europe Treaty and the Chemical Weapons Convention. No other president has successfully completed more than one. Thus, nuclear arms control,

nonproliferation, and disarmament negotiations have been at the center of U.S. foreign policy for much of the last 50 years.

But no president has spoken out more eloquently and in such a comprehensive way as did President Obama in Prague last April. He declared his strong support for a replacement START Treaty to be followed by deeper cuts in nuclear weapons leading to a multilateral nuclear weapon reduction negotiation involving all of the nuclear weapon states. He reiterated his support for U.S. ratification and entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT) and confirmed his support for a process leading to a nuclear weapon free world. He underscored his commitment to the strengthening of the NPT, along with measures to do more to safeguard fissile material around the world. And he urged the prompt negotiation of a fissile material cut-off treaty. The Prague speech unquestionably placed the current U.S. Administration generally and President Obama personally squarely behind an activist program in nuclear arms control and nonproliferation. In addition President Obama several months later chaired the UN Security Council meeting that adopted Resolution 1887 on nuclear non-proliferation and in the Spring of this year he hosted the successful Nuclear Security Summit in Washington.

The replacement START Treaty, an important step forward, was completed early this year. In addition, the long awaited Nuclear Posture Review for this administration was released a few months ago. Among many other things the NPR brings US national policy into line with the U.S. 1995 NPT commitment, effectively never to use nuclear weapons against non nuclear weapon NPT parties in good standing. It also reduces the role of nuclear weapons in U.S. security policy, another NPT commitment, made in 2000.

But of greatest importance is the CTBT. The NPT, the central international agreement underlying international peace and security in today's world, is a strategic bargain built on a

fundamental arrangement, nuclear nonproliferation for most of the world, now more than 180 countries, in exchange for peaceful nuclear cooperation and nuclear weapon, arms control and disarmament to be undertaken by the five NPT recognized nuclear weapon states, the United States, the United Kingdom, France, Russia, and China. The principal quid for the quo of most nations of the world to never acquire nuclear weapons is the test ban. It is the only arms control agreement explicitly mentioned in the NPT and it is the most significant commitment made by the nuclear weapon states to bring the necessary political balance to the NPT. The 1995 Statement of Principles, which was the political price for NPT indefinite extension, explicitly called for the negotiation of a CTBT in one year, that is, by the end of 1996.

This deadline was met and the CTBT was signed in September 1996 with the United States as the first signatory. The Treaty provides by its terms that it will enter into force upon ratification by the 44 states that had nuclear facilities on their territory and were members of the Conference on Disarmament in 1996. Thirty-six of those states have now ratified the CTBT and most of the rest are waiting upon ratification by the United States, China, Israel and Indonesia more or less explicitly. Indonesia nevertheless has announced that it would ratify soon. Egypt likely is waiting for Israeli ratification which will happen after US ratification. India promised ratification to the U.S. in 1998 but was let off the hook by the Senate's vote in 1999, perhaps India will return to this position and if so it is likely that Pakistan would follow suit. This would leave only North Korea.

However, the U.S. Senate rejected the CTBT in 1999 and there has been little progress in the U.S. since. Yet this Treaty is essential to the long-term viability of the NPT, the existence of which is the principal reason that President Kennedy's nightmare of nuclear weapon proliferation did not happen. The NPT may not be able to survive as a viable regime without CTBT entry into

force in the reasonably near future. Several months ago Vice President Biden, in a speech at National Defense University, reiterated the importance of the CTBT and pledged again the Obama Administration's commitment to its approval by the Senate and subsequent ratification.

A further complication is the complexity of the process of achieving START Treaty ratification. The negotiations were completed in late March after a year of vigorous effort. A deployed total warhead level of 1,550 operational strategic warheads and a limit of 800 strategic nuclear weapon delivery vehicles have been agreed. These are highly significant reductions and important contributions. Their achievement will open the door to further, much steeper U.S.-Russian reductions in strategic nuclear weapons, perhaps to the level of 1,000 total nuclear weapons each. This level is regarded as a necessary step to permit consideration of multilateral nuclear weapon reduction negotiations involving all nuclear weapon states which, over a long period of time, if successful, would put the world community on the road toward the eventual elimination of nuclear weapons.

But, while this first START replacement Treaty almost certainly will pass the Senate, it has been accompanied by vigorous debate. When it reaches the floor of the Senate, hopefully next month some Senators may want to try to attach conditions that will complicate CTBT ratification and/or make a second START replacement treaty much more difficult. Forty-one Senators have made it clear that their support will be contingent upon Administration commitment to nuclear weapon modernization.

On August 3<sup>rd</sup> Senator John Kerry, the Chairman of the Senate Foreign Relations Committee, responding to Republican requests for delay, postponed a Committee vote on the Treaty to send it to the full Senate until mid-September. This means probably that there will not be a full Senate vote on the Treaty until a lame duck session of the Senate in November at the

earliest. So far only one Republican Senator, Richard Lugar, has indicated that he will vote for New START. Senator Kyl and others have asserted that the Administration pledge of \$100 billion over the next ten years for nuclear weapon modernization is not nearly sufficient and Senator Kyl, supported by other Republicans, has claimed-incorrectly- that the new START Treaty will make deploying ballistic missile defense more difficult. This is in spite of the fact that all living former Secretaries of State and Defense and National Security Advisors support the Treaty. John Isaacs of the Council for a Livable World, a long-time Senate observer said “If this Treaty’s going to be so difficult, God knows how difficult it is going to be for the Test Ban Treaty, particularly after an election when Republicans are expected to pick up seats.” And Henry Sokolski, Director of the Non-Proliferation Policy Education Center rejected the idea of passing the Treaty through with the minimum required 67 votes (the Administration as of now can only count on 60) reflecting the view of many on the conservative side. “Trying to do treaties and national security policy as if they’re health care is a bad call. You don’t do this by one vote. You do this by overwhelming majority.” The New York Times on August 4<sup>th</sup> cited “arms control advocates” as speculating that the Republicans have intentionally made the road to ratification more difficult for New START to block more meaningful action down the road. Republicans of course deny this saying they are only applying responsible scrutiny and arguing against a rush to judgment.

So, at the end of the year, the replacement START Treaty might be in force but possibly with substantial obstacles placed in the path toward a second phase START Treaty, which will be difficult enough in any case, as well as CTBT ratification. Thus a multilateral nuclear weapon reduction negotiation involving the five NPT nuclear weapon states and in some way the three others, India, Pakistan and Israel, could be well off to the further future. And there could be

diminished chances for CTBT ratification in the near future. This latter issue will require personal involvement by President Obama, perhaps directly negotiating with key Senators at the appropriate time. Hopefully, the positive outcome at the recent NPT Review Conference will mitigate any short-term damage to the NPT from CTBT entry into force not yet being achieved.

In May the important five year review of the NPT took place in New York. This Review Conference was of special importance because of the refusal of the U.S. to accept the commitments to nuclear disarmament made at the 1995 NPT Review and Extension Conference, at which the NPT was indefinitely extended and their reaffirmation at the 2000 Review Conference and the resultant failure of the 2005 NPT Review Conference. But there could not have been a positive outcome to the NPT Review Conference this Spring unless the issue brought forward by Egypt of the need for progress toward a Middle East zone free of nuclear weapons and other weapons of mass destruction could be resolved. This is not a new issue, I personally dealt with it extensively in leading US government efforts directed toward achieving a permanent NPT in 1995. Many times I met with the then Egyptian Foreign Minister, his Excellency Amr Musa, and listened to his concerns about the Israeli nuclear program and his belief in the importance of a nuclear weapon free zone in the Middle East, even better a zone free of all weapons of mass destruction. This issue was resolved in 1995 by the inclusion in the Statement of Principles accompanying NPT indefinite extension a reference to the importance of achieving a nuclear weapon free zone in the Middle East as well as a separate Resolution of the Conference appealing to all States in the Middle East that were not yet NPT parties to join the Treaty and to work toward such a Middle East zone free of nuclear weapons and all other weapons of mass destruction.

This year Egypt said that this was no longer enough. Egypt proposed a conference in 2011 for all Middle Eastern states, which would have included a negotiating mandate, to attempt to achieve a treaty establishing a zone in the Middle East free of nuclear weapons and other weapons of mass destruction. The United States, which in the past has never supported such a conference, actively offered in return to support such a conference, on the condition that it not include a negotiating mandate. This led to a long diplomatic struggle between the United States and Egypt in the early months of this year. The U.S. had some reason to believe that Israel would attend such a conference as long the Conference was not given a negotiating mandate. Iran was also expected to attend should such a Conference take place bringing together the Middle Eastern states to discuss disarmament.

In the final week of the Conference Egypt and the United States were able to reach a compromise solution: The Conference will take place but in 2012, not 2011, and it will not have a negotiating mandate. The United Nations Secretary General, together with Britain, Russia and the U.S. (depositories of the NPT and co-sponsors of the 1995 NPT Resolution in the Middle East) were charged with identifying a 'host government' for the Conference and appointing a facilitator to organize preparations for the 2012 Conference.

Also important as well was the reaffirmation at the Review Conference of the various disarmament measures agreed at the 1995 and 2000 Review Conferences as well as the successful pressure placed on Iran to inhibit it from blocking consensus agreement on the Final Document of this year's Review Conference. All in all it was a successful Conference but in the background, although not agreed, was the insistence by 125 NPT parties that negotiations begin soon on an agreement abolishing nuclear weapons. If such negotiations have not begun by the next NPT Review Conference in 2015 the outcome of that Conference could be very different.

This is a time of promise because of the commitment of President Obama and his Administration and the widespread support for progress on nuclear arms control and non-proliferation in the international community as well as the growing support for Global Zero as many call it. It is also a time of great difficulty because of the many overwhelmingly serious crises that were left at the end of 2008 and against which only limited progress has been made, such as the world economic downturn, climate change, North Korea, Afghanistan, Iran, Iraq and Palestine. The polarized political situation in the United States also is a serious obstacle to progress and much time has passed. But while the hour is growing late, it is not too late. Success remains possible; that safer and more secure world that all of us want can still be built.