



**Lawyers Alliance for World Security
Committee for National Security**

1901 Pennsylvania Ave., NW, Suite 201, Washington, DC 20006
tel: (202)745-2450 fax: (202)667-0444 e-mail: disarmament@lawscns.org

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The Future of Nuclear Weapons

Remarks by Ambassador Thomas Graham, Jr. President of the Lawyers Alliance for World Security Before the American Society of International Law Washington – March 27, 1999

I would like to thank the American Society of International Law for inviting me here to discuss the future of nuclear weapons. I believe that we may be approaching a turning point with regard to the further spread of nuclear weapons, we can either move away from declared excessive reliance on these weapons and reinforce the instruments of international law that have been developed to control them, or we can try to look to nuclear weapons as a solution for a wide variety of security problems, turn away from the achievement of decades of diplomacy, and hope that other countries will not follow our example. And the current war in Yugoslavia again illustrates the essential uselessness of nuclear weapons by the United States and NATO as instruments of policy.

The Nuclear Non-Proliferation Treaty (NPT) is the cornerstone of international security. Before the NPT was negotiated in the 1960s, there were predictions that there could be twenty to thirty nuclear weapon states by the end of the 1970s, and who knows how many by the turn of the century. In response to this alarming possibility, the world community negotiated the NPT to limit nuclear

weapon proliferation to the five states (the United States, the United Kingdom, the former Soviet Union, France and China) that had already tested nuclear weapons. The NPT did not validate the possession of nuclear weapons by those five states, in fact it directly bound them in Article VI to work toward the ultimate elimination of nuclear weapons. The NPT defined a balance of obligations between the nuclear weapon states and the non-nuclear weapon states. The non-nuclear weapon states agreed to never acquire nuclear weapons. The nuclear weapon states agreed to engage in nuclear disarmament negotiations with the ultimate objective of the elimination of nuclear weapons and also to share the benefits of peaceful nuclear technology. This is the essential NPT bargain that is the basis of world security today and which made all subsequent nuclear arms control possible. The commitment in Article VI of the NPT should have a significant influence on the development of foreign policy in the five nuclear weapon states as observance of this commitment is central to success in achieving their common objective of preventing the further proliferation of nuclear weapons.

The NPT was a radical notion in the 1960s. Many important states were uncertain that it would be effective over time and wanted an easy way out in case proliferation was not stopped and nuclear arsenals became an unpleasant necessity for international political credibility. Owing to these concerns, the Treaty was initially given a twenty-five year duration, after which time its effectiveness would be reviewed and the states parties would again have the option to choose between nuclear armament and nuclear non-proliferation. When faced with this choice for the second time in 1995 at the NPT Review and Extension Conference, the international community remained concerned with the high political value of nuclear weapons and recommitted itself, this time permanently, to work toward security without nuclear weapons as the only alternative to a world filled with nuclear weapons states.

The 1995 NPT Review and Extension Conference did more than extend the NPT indefinitely. It adopted a Statement of Principles and Objectives on Nonproliferation and a framework for a strengthened review process that will guide our future efforts. The victory in New York in May 1995 was a common victory. It established a permanent landmark on the arms control horizon that we will be blessed to have in years to come. It represents a change in the conditions under which multilateral discussions on security will occur; broadening the responsibility for security but also the opportunities for international leadership. It also re-committed, pursuant to the Statement of Principles, the nuclear weapons states to vigorously pursue nuclear weapon reductions with the ultimate objective of zero. However, in 1995 a number of prominent third world countries privately said they would reexamine their commitments to the NPT if significant progress toward nuclear disarmament is not achieved in the short to medium term. More specifically there could be real trouble if there is continuing dissatisfaction with the nuclear weapons states' compliance with their disarmament commitments at the 2000 NPT Review Conference. In order to avoid disastrous consequences for the NPT regime and for international security on the whole, all the states parties to the NPT must fulfill their commitments; the nuclear weapon states will continue to be scrutinized and the health of the regime will be indivisibly linked with continuing progress toward the ultimate goal of a world free of nuclear weapons.

One of the principal obstacles to the reduction of nuclear weapons and the implementation of the Statement of Principles is the continued great political significance of nuclear weapons and stated excessive reliance on these weapons as epitomized by NATO's doctrine regarding the use of nuclear weapons. This doctrine which overtly emphasizes the centrality to NATO of nuclear weapons and reserves the right to use nuclear weapons first conceived early in the Cold War should be revised to reflect the world that we live in today – a

world in which the principal threat to world security is not a hostile super power armed with thermonuclear weapons, but rather is the threat of widespread nuclear proliferation. And while NATO's policy of reserving the right to use nuclear weapons first may have been appropriate during the Cold War, now it is contrary to our international commitments associated with the NPT and a direct contradiction to our non-proliferation efforts. In 1995, in association with the effort to extend the NPT indefinitely, the United States along with the other nuclear weapon states, undertook a formal commitment not to forswear the first use of nuclear weapons but rather never to use or threaten to use nuclear weapons against non-nuclear weapon state parties to the NPT, now some 181 countries, unless attacked by such a state in alliance with a nuclear weapon state (no exception was made for chemical or biological weapons). In 1996, the World Court implied that this commitment is legally binding. Thus, this commitment, referred to as negative security assurances, was adopted as U.S. policy during the Carter Administration, but it now is a formal commitment – found by the World Court to be legally binding – of the five nuclear weapon states made pursuant to a resolution of the United Nations Security Council. It was essential to the indefinite extension of the NPT and is essential to the continuance of the NPT as a viable regime. It is difficult to reconcile a NATO first use option with this commitment. The only states to which this commitment does not apply are Russia and China, because they are nuclear weapon states and India, Pakistan, Israel, and Cuba because they are not NPT parties. Surely we would not wish to initiate a nuclear war with Russia or China. Thus if the United States, the United Kingdom and France – the three nuclear weapon states that are Alliance Partners – are to be faithful to their international commitments associated with the NPT, the first use option logically applies only to India, Pakistan, Israel, and Cuba, while it significantly damages our worldwide non-proliferation efforts. It is not easily justified when considered in this light.

The right to use nuclear weapons first was thought to be important to the defense of NATO during the Cold War because of the former Warsaw Pact's superiority in conventional forces. But since the fall of the Soviet Union and the dissolution of the Warsaw Pact, it is NATO which maintains conventional superiority in Europe greater than has ever been enjoyed by any force in history. Continued insistence that the most powerful conventional force in the world would need to use nuclear weapons first strains NATO's credibility, as well as the belief by the world's non-nuclear weapon states that their own security does not require a nuclear weapons guarantee.

The threat of the use of chemical or biological weapons is not a valid reason to retain a first use policy. First, because the added deterrent value that nuclear weapons give beyond NATO's overwhelming conventional superiority is debatable. Second, because continuing to invest high political value in nuclear weapons erodes the nuclear non-proliferation regime, as described above, and impresses on the world that nuclear weapons are necessary instruments of policy. Third, because if we violate our international commitments not to threaten to use or use nuclear weapons against non-nuclear weapon states because we face chemical or biological weapons threats, we are inviting other states which also face serious chemical and biological weapon threats, such as Iran, to acquire nuclear weapons themselves. Fourth, chemical and biological weapon attacks are unlikely to cause a level of damage proportional to a nuclear response. Fifth, assuming a truly disastrous chemical or biological weapon attack were perpetrated against a NATO member state, one that would be proportionate to a nuclear response and that could not be stopped without resort to nuclear weapons, the longstanding international legal doctrine of belligerent reprisal would recognize our right to step outside our international commitments in self-defense. NATO's first use policy does not protect us against chemical or biological weapon attacks, but it makes nuclear proliferation more likely.

If the NPT is to be preserved, and the number of states and other groups armed with nuclear weapons is to be limited, all of the Treaty's states parties must work together towards its fundamental goal: the ultimate abolition of nuclear weapons. One milestone will be the Third Preparatory Committee Meeting this Spring for the year 2000 NPT Review Conference. The first two Preparatory Committee Meetings ended in diplomatic disaster, and the third is likely to do the same unless the nuclear weapon states do more to live up to their disarmament commitments. But the NATO Summit, which will take place about two weeks before the NPT Preparatory Committee Meeting, is likely to reinforce the overly high political value of nuclear weapons by not revising the outdated, Cold War language which pervades the old NATO Strategic Concept document and which extols the value of nuclear weapons. The far too high political value of nuclear weapons, a relic of the Cold War, continues. The Indian Prime Minister said, in effect, after the tests last Spring, that *India is a big country now that we have the bomb*. If this high political value of nuclear weapons is not lowered, nuclear weapons will simply be too attractive politically and the 1945-era technology too simple to acquire for many nations to continue to forswear them. Nothing would do more to lower the political value of nuclear weapons and strengthen the NPT regime than to limit the role of nuclear weapons to the core deterrence function of deterring their use by others – specifically, a pledge by NATO that it will not introduce nuclear weapons into future conflicts – that it will follow a no first use policy. It is important to the security of the Alliance that it commit itself to a review of its nuclear weapon use policy after the April Summit and consider whether it is not in the interest of the Alliance to abandon its first use of nuclear weapons option and adopt a no first use policy.

The first use policy does not protect the Alliance, but if it does not change, it may contribute to increasing the threat of widespread nuclear proliferation. And a no first use policy

would enhance the achievement of reduction in nuclear weapons by reducing their political value and would make the attainment of its operational counterpart – taking weapons off alert state – more likely. Again, if we continue to insist that the strongest conventional military alliance the world has ever known were to be somehow not strong enough and that NATO, must explicitly retain the option to use nuclear weapons first, we are sending a clear message to the world: nuclear weapons are essential for security and greatness. The world is beginning to understand this message and before long it may be impossible to convince twenty, fifty, or a hundred nations otherwise. In such a world, security and greatness would be beyond the reach of all.