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Statement of Dr. John Burroughs

*Executive director, Lawyers' Committee on Nuclear Policy, on
Rule of Power or Rule of Law?*

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The recently released Nuclear Posture Review makes a mockery of 30 years of US commitments under the Nuclear Nonproliferation Treaty (NPT).

The United States ratified the NPT in 1970 and entered into force the same year. It bars almost all countries in the world from acquiring nuclear weapons, and commits treaty members that do possess nuclear weapons (Britain, China, France, Russia, and the United States) to negotiate their elimination. Only four countries are outside the regime, Cuba and three nuclear-armed states, India, Pakistan, and Israel. Non-nuclear weapon states insisted that the NPT include the Article VI promise of good-faith negotiation of "cessation of the nuclear arms race at an early date" and "nuclear disarmament". Also part of the bargain are declarations by the United States and other nuclear-armed states that they will not use nuclear arms against non-nuclear weapon states.

In the post Cold War era, beginning in 1995, the elements of the Article VI disarmament obligation have been clearly specified. In 1995, in connection with indefinite extension of the NPT, all states parties, including the United States, committed to complete negotiations on the Comprehensive Test Ban Treaty (CTBT) by 1996. That was done, but the U.S. Senate declined to approve ratification in 1999. In 1996, the International Court of Justice unanimously held that Article VI obligates states to "bring to a conclusion negotiations leading to nuclear disarmament in all its aspects."

In the 2000 Review Conference, all states parties, including the United States, agreed upon a menu of 13 practical disarmament steps, including an "unequivocal undertaking" to "accomplish the total elimination" of nuclear arsenals pursuant to Article VI, ratification of the CTBT, U.S.-Russian reductions of strategic nuclear forces, application of the "principle of irreversibility" to

disarmament measures, "measures to further reduce the operational status of nuclear weapons systems," and a "diminishing role for nuclear weapons in security policies."

The Bush administration's Nuclear Posture Review (NPR), released in January 2002, reneges on those commitments:

- The disclosure of a variety of options for use of nuclear weapons, including by preemptive attack, against non-nuclear weapon states, is contrary to the commitment to a "diminishing role for nuclear weapons in security policy" made less than two years ago. It also undermines the longstanding U.S. NPT declaration that it will not use nuclear arms against non-nuclear states.
- The "principle of irreversibility" requires that arms control and disarmament measures physically render rearmament impossible, for example by sawing up missiles, as has been done under START I. Reductions of deployed strategic arms will violate this principle because they will be accompanied by maintenance of a large "responsive force" capable of being redeployed in days, weeks, or months.
- "Reduction of the operational status of nuclear weapons", another of the 2000 commitments, refers to dealerting measures like removing warheads from missiles. Dealerting in general means increasing the amount of time required to launch a nuclear attack. The NPR includes no plans to employ dealerting measures to reduce the operational status of the large deployed strategic force, slated to be 3800 warheads in 2007 and 1700-2200 in 2012.. During the electoral campaign, President Bush spoke favorably of dealerting, but no steps have been taken. The planned "responsive force" will be in a dealerted condition. That does not change the fact that with their deployed "operational" forces the United States and Russia will remain able to launch an attack destroying the opposing society within minutes of an order to do so.
- NPR plans for development of new or modified warheads including earth penetrators show a lack of good faith in relation to the Article VI obligation to negotiate "cessation of the nuclear arms race".
- NPR plans for the maintenance and modernization of missiles, bombers, and warheads for the next half-century show a lack of good faith in relation to the Article VI obligation to negotiate "nuclear disarmament" and the 2000 commitment "to accomplish the total elimination" of "nuclear arsenals". Above all, the lack of compliance with Article VI lies in the failure to make disarmament the driving force in national planning and policy with respect to nuclear weapons. Reference to the disarmament obligation remains a rhetorical flourish for international settings. Gen. John Gordon, the official overseeing the U.S. nuclear weapons complex, testified in February to Congress that the new Nuclear Posture Review "reaffirms that nuclear weapons, for the foreseeable future, will remain a key element of U.S. national security strategy."

The September 2001 attacks on the United States point to the urgent need to marginalize nuclear weapons and intensify global cooperation on the control and nonproliferation of nuclear weapons and nuclear materials. That is the path towards reducing the risk of use of nuclear weapons by terrorists or proliferating states. Instead, in defiance of its NPT commitments, the United States has adopted an irrational policy of elevating the role of nuclear weapons in its overall military strategy. This will reduce U.S. and global security, not increase it.

US nuclear weapons policy will come under heavy criticism at an upcoming NPT meeting, from April 8-19, at the United Nations in New York where governments will review compliance with NPT obligations. The meeting is the first of several Preparatory Committee meetings to prepare for the 2005 Review Conference.