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Statement of Nicole Deller on Rule of Power or Rule of Law?

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Good Morning. I am Nicole Deller, the principal editor of the Rule of Power or the Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties published by the Institute for Energy and Environmental Research and the Lawyers' Committee on Nuclear Policy. This report is the first in depth study of U.S. compliance with a broad range of security treaties.

In this report, IEER and LCNP look to the United States because of its role as the sole military and economic superpower, because it is a principal advocate of the concept of the rule of law, and because it played a leading role in the creation of many modern international legal institutions.

We have assessed nine treaties that address some of the most pressing global security issues, and found that The United States has violated, compromised, or acted to undermine in some crucial way every one of them. Recent shifts of U.S. policy toward greater reliance on military force, including nuclear weapons, as the main component for securing the people of the United States from a variety of threats sets a dangerous course and a poor example.

In the past few years, we have witnessed U.S. rejection of treaties that were not only widely embraced by the international community, but would enhance global security. These include the Comprehensive Test Ban Treaty, the Treaty to Ban Landmines, the International Criminal Court, which although signed by the U.S., it now opposes, a protocol to create a transparency regime for the Biological Weapons Convention and the Kyoto Protocol, which, although not generally considered a security treaty in the traditional sense, addresses the issue of global climate change, which can have significant security implications.

At the same time, the United States is not complying with obligations of several other significant global security treaties. This includes the provision of the Non-Proliferation treaty to take progressive steps toward nuclear disarmament; provisions relating to inspection of its facilities

under the Chemical Weapons Convention, the obligation to commit to reducing climate change as set forth in the UN Framework Convention on Climate Change, and there are even questions as to whether the United States' biodefense research is compliant with the fundamental obligation of the Biological Weapons Convention to not produce biological weapons or means of delivery of biological agent.

And finally, the United States noticed its intention to withdraw from the Anti-Ballistic Missile Treaty, a cornerstone agreement for nuclear policy. This was the first instance of a unilateral withdrawal of a major power from a nuclear arms control treaty after it has been put into effect.

My colleagues Dr. Makhijani and Dr. Burroughs will address the ways in which the United States is violating the NPT, the CTBT, and has undermined the Kyoto Protocol and Framework Convention on Climate Change.

Another important example is the Biological Weapons Convention. The BWC, which was ratified by the US in 1975 and entered into force that same year, prohibits the development, production, stockpiling of biological agents and toxins, except in quantities needed for vaccines and other defensive measures. But the treaty lacks verification measures, such as states' declarations of facilities and programs using these agents. Without these measures, the treaty has no teeth, it cannot detect violations, it cannot deter would-be violators, and it does little to help countries share information on a weapon whose dangers have recently come into sharp focus.

For the past seven years, parties to the treaty have negotiated a protocol to install the declaration and verification regime to install a system of control for states' use of biological agents and toxins. The United States rejected the draft protocol that was the result of these negotiations, and also sought to bring to a halt the efforts to create any internationally-binding agreement. Rather, it seeks voluntary measures for each state to report and share information.

And while the United States expresses a desire to strengthen the convention, arms control experts began questioning whether its own biodefense programs have passed the limit of activity that is permitted under the Convention. As part of its biodefense program, the United States constructed a model bio-bomb and weaponized anthrax. These activities may be seen as violating the BWC, because, although the stated purpose for the activities is defensive, the BWC does not permit the production of weapons. These and other biodefense activities such as creating a genetically enhanced super-strain of anthrax, has been carried out in secret, and so its treaty partners have not been able to assess its compliance. The dangers of this policy are clear. If the United States wants to verify the compliance of other states with the terms of the BWC, it cannot keep its own activities in the dark. And other states may undertake their own secretive biodefense programs, following the U.S. example.

This is but one example where the United States rejected a treaty whose goal was to enhance security in favor of its own measures.

In a telling demonstration of its approach toward security-related treaties, the Bush administration appointed as the Under Secretary of State for Arms Control and International Security an individual who believes that international law is not really law. According to Under Secretary John Bolton, "There may be good and sufficient reasons to abide by the provisions of a treaty, and in most cases one would expect to do so because of the mutuality of benefits that treaties provide, but not because the United States is 'legally' obligated to do so."

This argument has dangerous practical implications for international cooperation and compliance with norms. U.S. treaty partners do not enter into treaties expecting that they are only political commitments that can be overridden based on U.S. interests. There is little incentive to create new treaties if leading states may walk away from them before or even after they are enacted. Also, when a powerful state is seen to disregard its treaty obligations, other states will see this as a justification to relax or withdraw from their own commitments.

Undermining the international system of treaties is likely to have particularly significant consequences in the area of global security. Even though the United States is uniquely positioned as the sole economic and military superpower, unilateral actions are insufficient to protect its people. For example, since September 11, prevention of proliferation of weapons of mass destruction is an increasing priority. The U.S. requires cooperation from other countries to prevent and detect proliferation, including through the multilateral disarmament and nonproliferation treaties.

But the United States is setting itself above the rules and rejecting the notion that treaties are instruments among equals, in which all parties give up something and get something.

This is a perilous direction for the United States, which gave the world the very concept of the rule of law. If the United States sets itself up above the law, and bases itself on the rule of power instead, what's to stop other countries from doing the same?