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**NATO and Nuclear Disarmament:**

**An Analysis of the Obligations of the NATO Allies of the United States under the  
Nuclear Non-Proliferation Treaty and the Comprehensive Test Ban Treaty**

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## Preface

Even excluding nuclear weapons, the member countries of the North Atlantic Treaty Organization (NATO) spend far more money on their militaries than the rest of the world put together. The total U.S. military budget alone is now about equal to that of all other countries, excluding the expense of the Iraq war. Despite the overwhelming superiority in firepower that the members of NATO possess, NATO still maintains a central role for nuclear weapons in its military doctrine.

The Nuclear Non-Proliferation Treaty (NPT) is in peril from a number of directions. The most immediate threats to the NPT do not come from NATO as an organization, but rather from nuclear weapons states and aspiring nuclear weapons states, the NATO allies of the United States do possess far more leverage over U.S. actions than other countries. The debate in the Security Council in early 2003 about the Iraq war showed that the United States could ignore world opinion and even that of its close allies and go to war. Yet, subsequent events have proven the merit, to a large part of the U.S. public and to many policymakers, of a larger international agreement, freely given, for long-term security and stability.

This report seeks to address the issue of what leverage the NATO allies of the United States might possess to pressure the U.S. to adhere to its various obligations under the NPT. It also seeks to analyze the nuclear disarmament obligations of the NATO allies of the United States, especially its non-nuclear allies. *Their situation is evolving in a direction where their NPT-related obligations are coming into increasing conflict with the policies of the leading NATO member, the United States. They may soon have to make a choice as to which obligations are primary.*

We recognize of course, that NATO members have historic ties with one another and that they are loathe to jeopardize them. We also know that newer NATO members, *i.e.*, the countries of Eastern Europe, have a great deal to lose by pressing the United States on issues that the latter deems central to its global purposes. That was clear, were any proof needed, during the Security Council debate on the Iraq war. We are also aware of the divide within the European Union itself on nuclear weapons issues, since the EU has two states, Britain and France, that are nuclear weapon states. Finally, there is the divide created by the Iraq war among the more powerful EU members – with Britain participating substantially in the decision to wage the war and in the prosecution of that war. These are among the reasons that we address this report mainly to the people of the non-nuclear NATO allies of the United States, especially those who have U.S. nuclear weapons on their soil as part of NATO nuclear sharing arrangements. They are the ones who will have to pressure their governments to play their part in helping preserve the Comprehensive Test Ban Treaty (CTBT) and the NPT in its non-proliferation and disarmament purposes is. The world is at a crossroads on nuclear weapons and other security issues. Those two treaties are principal elements for building a peaceful, equitable, and secure world based on the rule of law.

The idea for this report arose during a conversations that one of us, Arjun Makhijani, had with a prominent diplomat from a NATO ally of the United States, who voiced strong support for the comprehensive test ban, but yet seemed unwilling to challenge the United States in any meaningful way to actually ratify the CTBT or even adhere to a test moratorium for the indefinite future. If the military ties that bind the West are more important than global commitments, then how should the rest of the world view their own security situation? This has become a pressing problem since the publication of the details of the U.S. Nuclear Posture Review of January 2002, and The National Security Strategy of the United States of America, September 2002, which includes the kind of pre-emptive war that the United States and Britain waged on Iraq. The United States has re-affirmed that it may use nuclear weapons under a variety of circumstances and expanded the possible circumstances of their use to “surprising” developments.

While the United States seems intent on setting aside the rule of law for itself in international relations, the new draft security strategy of the European Union affirms it:

Spreading good governance, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order.<sup>1</sup>

While the United States is embarked upon a policy of pre-emptive war in the pursuit of the War on Terror, the draft EU strategy speaks of “pre-emptive engagement” to help create a world that “is seen as offering justice and opportunity for everyone” as a part of achieving better security for Europe.<sup>2</sup>

The engagement of Europe and Canada with the United States in affirming the rule of law and upholding nuclear disarmament commitments under the CTBT and NPT is crucial at this juncture. The political soil in the United States may be more fertile too, given the continuing crises in the Middle East and in nuclear proliferation. The strategy of pre-emptive war and spurning of treaty commitments by the powerful when they are deemed inconvenient is a likely road to nuclear chaos and perpetual war.

We recognize that the NATO allies of the United States are closely linked to the United States by many common interests and policies. Yet, the world needs a course to nuclear disarmament and peace. We offer this report as a contribution to the discussion on what the NATO allies of the United States might do to further those goals and to persuade their most powerful ally to take a different course.

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<sup>1</sup> Javier Solana, “A Secure Europe in a Better World,” p. 9. On the Web at <http://ue.eu.int/pressdata/EN/reports/76255.pdf>. A draft European Union security strategy paper by the EU High Representative for the Common Foreign And Security Policy, delivered at the European Council meeting in Thessaloniki, June 20, 2003.

<sup>2</sup> Ibid., pp. 9 and 10.

## Acknowledgements

Nicole Deller researched and wrote the first draft of the portions of this report dealing with U.S. compliance with its treaty obligations as a follow-up to her work as chief editor and co-author of the *Rule of Power or Rule of Law?* (Apex Press, New York, 2003). Arjun Makhijani participated in writing and editing the entire report.

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## Summary and Recommendations

### A. Main findings

The world situation is precarious and requires the reinforcement of multilateral security treaties, particularly in regard to nuclear non-proliferation. North Korea has withdrawn from the NPT. There is increasing discussion even in Japan about the acquisition of nuclear weapons. There is more and more concern that Iran may become a nuclear weapon state. A world of nuclear haves and nuclear have-nots is becoming untenable.

A continued slide by the United States and its NATO allies in the direction of NPT violations could greatly increase proliferation dangers and even contribute to the collapse of the NPT and nuclear chaos. As the United States prepares to operationalize its new nuclear doctrine by building new nuclear weapons manufacturing plants, designing new types of nuclear weapons, and continuing its preparations to resume testing, the responsibilities of the allies of the United States to help stave off such an eventuality are greater and more urgent than ever.

1. The United States is continuing to maintain readiness to test nuclear weapons and is very likely to officially commence research into new weapon types.
2. The most urgent issues for NATO are the nuclear test moratoria and the Comprehensive Test Ban Treaty (CTBT). All NATO states except the United States have ratified the CTBT and have committed to ensuring its entry into force. The test ban is intimately linked with the nuclear non-proliferation and disarmament goals of the NPT. For any state to test a nuclear weapon would, in effect, be declaring its abandonment of its NPT commitments, a circumstance that would likely lead to testing by other states, both within and outside the NPT.
3. If the United States resumes testing nuclear weapons, those weapons may be incorporated into NATO nuclear policy. Integration into NATO of a weapon developed through resumed testing would put NATO allies in violation at least in the spirit of their fundamental CTBT obligations.
4. Global security requires reinforcement of multilateral security treaties, particularly in regard to nuclear non-proliferation. The further undermining of the Nuclear Non-Proliferation Treaty (NPT) by the United States and its NATO allies could greatly increase proliferation dangers. The NPT is under great and increasing strain from the double standard under which a few states insist on the prerogative of maintaining nuclear arsenals, while denying them to others, in ways that can even include the use of force.
5. Between 1995 and 2000, three major developments gave sufficient specificity and clarity to the disarmament obligations of the NPT, so that all parties to the NPT have explicit obligations to further the goal of the complete elimination of nuclear weapons. Specifically, all nuclear weapons states affirmed at the 1995 NPT Review Conference that they are obliged to achieve complete nuclear disarmament, and at the 2000 Review Conference to take specific, irreversible steps to achieve it. In 1996, the International Court of Justice affirmed in a unanimous advisory opinion that nuclear weapons states were obliged to achieve complete nuclear disarmament.

6. While the five nuclear-weapon-states parties to the NPT have the principal obligation to achieve the explicit goal of total elimination, non-nuclear parties also have a major role to play both in ensuring the non-proliferation end of their bargain and in steering the nuclear weapons states toward upholding their NPT disarmament commitments.
7. The United States is in violation of its NPT commitments to complete nuclear disarmament and to create an irreversible direction of its military policy towards complete nuclear disarmament. Contrary to the express commitment made at the NPT Review Conference in the Year 2000, the United States has abandoned the ABM Treaty. It has also abandoned its longstanding commitment to ratify and adhere to a CTBT. It has announced that the test moratorium now in effect is not likely to be permanent and is not being maintained as an international obligation. U.S. policies regarding its nuclear-related treaty obligations have serious implications for its NATO allies.
8. NATO continues to rely on nuclear weapons as an “essential political and military link” and the “supreme guarantee” of alliance security. NATO maintains a policy that relies on the threat of use of nuclear weapons under circumstances that are not well-defined. All NATO states, with the exception of France, are involved in the nuclear planning group, which determines among other things, issues of deployment of nuclear weapons; and the United States has deployed an estimated 150 to 180 nuclear weapons on seven European NATO states, six of which are non-nuclear weapon states. As long as these policies endure, NATO countries cannot in good faith claim that they are making the progress toward disarmament that has been demanded as an NPT Article VI obligation since 1995.

## **B. Recommendations**

We therefore recommend that the NATO allies of the United States, and in particular its non-nuclear allies, call for adoption of the following measures before the 2005 Review Conference of the NPT:

1. **Test ban:** The NATO allies of the United States should immediately inform the United States that a nuclear test would put their obligations under the NPT and CTBT in conflict with their NATO membership. That would likely precipitate a much larger crisis between Europe and the United States, and hence also in the world. They should inform the United States formally that it is crucial that the U.S. commit itself to maintaining the nuclear test moratorium indefinitely and to resuming the path of CTBT ratification if it wishes to avoid a major rift within NATO. This is the most important short-term step that the NATO allies of the United States should take. A formal communication regarding the need to make the nuclear test moratorium permanent and ratify the CTBT is highly desirable to help stem the slide toward proliferation and nuclear chaos that is becoming more serious as world events are evolving at present. It should be sent to the United States before the Preparatory Committee meeting of the NPT parties in April-May 2004, and in any case before the 2005 NPT Review Conference.

2. **Negative security assurances:** It is also crucial that the NATO allies of the United States make a commitment to a formal policy within NATO that negative security assurances to non-nuclear NPT parties are binding and that this should be reflected in an explicit and unconditional no-first-use nuclear weapons policy for NATO.<sup>3</sup>
3. **NATO de-nuclearization:** The NATO allies of the United States should work for a de-nuclearization of NATO by a) withdrawal of U.S. nuclear weapons now stationed in six non-nuclear member states of NATO (Belgium, Germany, Greece, Italy, Netherlands, Turkey) and in Britain, b) dismantlement of the nuclear infrastructure in Europe related to U.S. nuclear weapons and not certifying follow-on delivery systems (such as the Typhoon aircraft/"Eurofighter") for nuclear weapons use and c) an end to the nuclear sharing arrangements, which are of dubious legality at best, that could result in a transfer of U.S. nuclear weapons to its NATO allies in time of war.

If the United States refuses to withdraw its nuclear weapons from non-nuclear NATO states, they might consider the model of New Zealand and adopt domestic legislation to make their countries into nuclear free zones. Further, a withdrawal of U.S. nuclear weapons from European territory and an end to nuclear sharing in NATO would relieve the NATO allies of the United States of legal responsibility for U.S. nuclear policy or U.S. nuclear tests, and put them in a much better position to save the NPT should the U.S. decide to test a nuclear weapon. An adoption of such a policy by the NATO allies of the United States along with steps to try to preserve a permanent end to testing may be the most important single step that they could take to prevent the NPT from collapsing.

The NPT is already under great stress on several fronts due to (i) the failure of the nuclear weapon states, led by the United States, to fulfill their NPT obligations, (ii) the continued failure to make any progress on a nuclear weapon free zone in the Middle East in the context of persistent severe violence in Israel/Palestine, (iii) the U.S. Nuclear Posture Review, which mentions several non-nuclear states as potential nuclear weapon targets, (iv) the nuclear ambitions of North Korea, which has announced its withdrawal from the NPT, and possibly Iran, a non-nuclear party to the NPT, (v) the failure of the nuclear weapons states to provide unequivocal and verifiable negative security assurances, and (vi) increasing pressures in some non-nuclear states to develop nuclear weapons in light of the above. The U.S.-British war on Iraq has added to these stresses.

In the face of these stresses, the NATO allies of the United States, whose partnership is based on a multilateral treaty, should be committed to the international rule of law, the system in which states agree to a set of restraints in exchange for increased security and protection of rights. The laws that make up this system are in urgent need of strengthening

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<sup>3</sup> A no-first-use policy is not an endorsement of a second use. Admiral L. Ramdas, retired chief of the Indian Navy, has pointed out that it is, in effect, a declaration of a nuclear cease fire between nuclear weapon states. See "More Sign Posts for Peace in South Asia," L Ramdas. July 18, 2002. On the Web at <http://www.ieer.org/comments/dsmt/ramuplan.html>. Just as a cease-fire while a violent conflict is going on does not mean peace, but does enable a dialog to proceed with more confidence, a no-first-use policy provides a context for diplomacy to further the goal of nuclear disarmament. It also provides a negative security guarantee to non-nuclear states.

and improved compliance. The question posed by this report is whether the non-nuclear members of NATO are willing to take the necessary steps to ensure compliance with the spirit of two key treaties, the NPT and the CTBT, and whether they can act to restrain other more powerful actors from their refusal to adhere to this system. NATO's policy of continued reliance on nuclear weapons and the U.S. maintenance of an active option of testing have created a situation in which the global disarmament obligations of NATO states are on a collision course with continued membership in NATO.

The 2005 Review Conference of the NPT is likely to be turbulent even if the US would change its nuclear policy for the better. It could be a catastrophe if there is no change of course regarding Article VI commitments on the part of the nuclear weapon states and the NATO allies of the United States, and unless the test moratorium is maintained by all nuclear weapons states. It is therefore crucial that the NATO allies of the United States, and particularly the NATO non-nuclear states, should act on these recommendations before the start of the 2005 NPT Review Conference.

The governments of the NATO allies of the United States are in various states and levels of agreement with U.S. nuclear policies as it relates to NATO. There has been modest disagreement, but that has been papered over and not risen to the level needed to change policy. It will be up to the people of the NATO allies of the United States to re-invigorate the movements for nuclear disarmament and non-proliferation that have been so vigorous in the past so that they can pressure their governments to take urgent action to fulfill their disarmament commitments.

We believe that our recommendations are not only important for the NATO allies of the United States and for the NPT and CTBT. They are also crucial for the United States and its security. In the past few years, the United States has been turning its back on many of its treaty obligations and on its own best tradition regarding the rule of law. It needs the help of its friends to steer itself away from its unilateralist course onto a path that will be more secure for everyone, including itself.

## Chapter I. Disarmament Obligations and the NPT

As parties to the NPT, all NATO states have agreed to undertake a process toward nuclear disarmament, as set forth in NPT Article VI. Although the provision was traditionally viewed as vague and aspirational, beginning in 1995, Article VI has been interpreted as a clear undertaking to nuclear disarmament -- as the International Court of Justice held -- "in all its aspects." At the 1995 NPT Review and Extension Conference, and the 2000 NPT Review Conference, states parties agreed to undertake specific and measurable steps to mark progress toward that goal. One key element to achieve disarmament that was emphasized in these declarations was the entry into force of a nuclear test ban.

NATO policy, which maintains an enduring reliance on nuclear weapons, stands in contradiction to the pledge of its member states to nuclear disarmament. This contradiction could be brushed under the rug as long as the United States, and by extension NATO, could credibly claim that it was making progress towards the fulfillment of its nuclear disarmament obligations. Prior to 1999, the United States had made progress on disarmament, including the Strategic Arms Reduction Treaties (START) with Russia, the test moratorium, the signing of the CTBT, and NATO's 85% reduction of its sub-strategic forces since 1991. However, the rejection of the CTBT by the U.S. Senate in 1999, the announcement of the NATO doctrine in 1999 (see below), the Bush administration's hostility to the CTBT, the U.S. withdrawal from the ABM Treaty, the U.S. Nuclear Posture Review of 2002, among other actions, point clearly to the conclusion that that the United States does not intend to fulfill its nuclear disarmament obligations and intends, on the contrary, to continue reliance on nuclear weapons for the indefinite future.<sup>4</sup> Because the United States is the *de facto* leader of NATO, this conclusion will inevitably impact the NATO's nuclear policy. All NATO states, but particularly those that have forsworn acquisition of nuclear weapons, must assess how NATO military strategies may compromise their commitments made under the NPT.

The NPT is by far the most important and vital arrangement for protecting against the proliferation of nuclear weapons. Only India, Israel and Pakistan are completely outside the NPT regime. North Korea announced its withdrawal from the NPT in January 2003, with immediate effect (contrary to the three-month notice requirement of the treaty). Despite some setbacks, including two well-established violations of the non-proliferation provisions,<sup>5</sup> the NPT has largely succeeded in achieving its goal of non-proliferation. One of the most extraordinary accomplishments of the NPT has been its role as the legal instrument through which several states' announced the rollback and termination of their nuclear programs. Once they had done that, they acceded to the NPT as non-nuclear

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<sup>4</sup> The analysis regarding the United States role in security related treaties is largely based on Nicole Deller, Arjun Makhijani, John Burroughs, eds., *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties* (New York: Apex Press, 2003). For an analysis of nuclear treaties and U.S. compliance, see Chapters 2, 3, and 4.

<sup>5</sup> Only two countries, Iraq and North Korea, have conclusively been found to have violated the non-acquisition provisions of the NPT. Iraq had a nuclear weapons program that was discovered and dismantled after the Gulf War. North Korea was in the process of developing a weapons program but agreed to suspend it in a 1994 when it arrived at an agreement with the United States, known as the Agreed Framework. North Korea again withdrew from the NPT (and did so illegally, since it was without the three-month notice).

states.<sup>6</sup> The NPT is also the only legal instrument which requires its parties, including nuclear weapon parties, to act to achieve complete nuclear disarmament.

The NPT includes five nuclear weapon states (three of which are in NATO) and 182 non-nuclear weapon states.<sup>7</sup> As part of their bargain with non-nuclear parties to the NPT that renounced the acquisition of nuclear weapons, the five nuclear weapons states parties agreed to achieve complete nuclear disarmament. Specifically, under NPT Article VI, parties agree to “pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”

The mandate of Article VI was vague, however, and nuclear weapons states relied on that vagueness to ignore their disarmament commitments. Before the NPT-related developments of the 1995-2000 period, the non-nuclear members of NATO might have relied on the Cold War confrontation in Europe and the vagueness of Article VI of the NPT to avoid addressing their disarmament obligations under the treaty. That is no longer a tenable position. Having subscribed to the Principles and Objectives of 1995 and to the Final Document of 2000, there is now no question that NPT parties, and the nuclear weapon states in particular, have explicit obligations as parties to the NPT to further the goal of complete nuclear disarmament and to achieve it. These obligations include specific, measurable, steady, and irreversible steps towards that goal.

#### **A. NPT Extension Principles and Objectives Established, 1995**

In 1995, the year that the NPT was due to expire unless extended, the United States and other nuclear weapon states pressed for the treaty to be extended indefinitely. The other NPT parties agreed to the indefinite extension provided that nuclear weapons states committed to a statement of “Principles and Objectives for Nuclear Non-Proliferation and Disarmament.” The Principles and Objectives, which were unanimously agreed to by all parties to the NPT, explicitly set forth measures regarding the implementation and fulfillment of the Article VI obligation of nuclear disarmament. These included, among other commitments, the “*determined* pursuit by the nuclear-weapon States of *systematic and progressive* efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control.”<sup>8</sup> The specific immediate commitments included completion of a comprehensive test ban treaty by 1996. Although the Principles and

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<sup>6</sup> Brazil and Argentina had nascent nuclear weapons programs but gave them up and joined the NPT as non-nuclear parties. South Africa gave up the arsenal it acquired during the apartheid regime and joined the NPT as a non-nuclear member. Kazakhstan, Ukraine and Belarus, which had nuclear weapons on their national territories as Soviet Republics gave them up and joined the NPT as non-nuclear states after the Soviet Union disintegrated. The total of 187 does not include North Korea.

<sup>7</sup> The NPT nuclear weapon states are China, France, Russia, the United Kingdom and the United States. France, the United Kingdom and the United States are the three NATO nuclear weapon states, and currently there are 16 non-nuclear NATO members (Canada and 15 European countries).

<sup>8</sup> Emphasis added.

Objectives are political, and not legally binding in the same sense as the treaty itself, they constitute an elaboration of the process of the achievement of the central disarmament goal of the treaty. They have political weight because they are commitments tied to a binding legal decision to extend the treaty indefinitely, and were made in furtherance of the nuclear disarmament goal of the treaty.

## **B. Article VI Interpretation by the International Court of Justice**

In 1996, the International Court of Justice (ICJ), the judicial branch of the United Nations, offered another interpretation of the Article VI obligation in its ruling on the legality of the threat or use of nuclear weapons, an advisory opinion issued at the request of the UN General Assembly. The ICJ held that the threat or use of nuclear weapons was “generally” contrary to international law. While the Court was unable to reach a definitive conclusion regarding threat or use in an extreme circumstance of self-defense in which the very survival of a state is at risk, it was unanimous and specific in its interpretation of Article VI of the NPT. In that regard, the Court unanimously held that Article VI of the NPT requires the nuclear weapons states “to pursue in good faith and *bring to a conclusion* negotiations leading to nuclear disarmament *in all its aspects* under strict and effective international control.”<sup>9</sup>

The ICJ’s unanimous opinion that the NPT required the achievement of complete nuclear disarmament added legal weight to the Principles and Objectives in regard to the same goal that had been unanimously agreed upon by the NPT parties in 1995.

## **C. Article VI Interpretation of the 2000 NPT Review Conference**

The April 2000 NPT Review Conference further interpreted the Article VI disarmament obligation. The Final Document of the 2000 NPT Review Conference included 13 “practical steps for the systematic and progressive efforts to achieve nuclear disarmament.”<sup>10</sup> A key element was “an unequivocal undertaking by the nuclear-weapon states to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all states parties are committed under Article VI” (step 6). The language of step 6 reflects a reaffirmation of the interpretation of the ICJ that the parties to the NPT, and specifically those among them that possess nuclear weapons, must achieve complete nuclear disarmament. This was a considerable advance over the 1995 language of the Principles and Objectives, which stated that complete nuclear disarmament was an “ultimate goal” thereby leaving its achievement to the indefinite future.

Another significant advance beyond the 1995 Principles and Objectives, which committed parties to the vague “systematic and progressive steps” towards complete disarmament, is

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<sup>9</sup> International Court of Justice. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ Reports, July 8, 1996. The Hague. Summary on the Web at: <http://www.icj-cij.org/icjwww/idecisions/isummaries/iunanaummary960708.htm>, para. 105(2)(F). Emphasis added.

<sup>10</sup> For the complete list of the thirteen steps, see pages 14-15 of 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. “Final Document.” Volume 1, Part 1. On the web at <http://disarmament.un.org:8080/wmd/npt/2000FD.pdf>.

the requirement that the steps be irreversible. In other words, nuclear weapons once eliminated from the arsenal must not be reactivated or redeployed. Reductions in numbers of weapons must not be reversed. And new developments in technology must not lead to development of new nuclear weapons. In furtherance of these general goals, the 2000 NPT Review Conference Final Document also noted the importance and urgency of gaining ratifications of the CTBT, and calls for maintenance of the test moratoria pending entry into force of the CTBT. Like the commitments undertaken in conjunction with the indefinite extension of the NPT, these steps are widely understood to be “political” rather than “legal” in nature. However, the steps were adopted without objection by the Review Conference and, as such, represent all NPT states’ view of what Article VI requires as of the year 2000.

When taken together, the achievements of 1995, 1996 and 2000 have converted the NPT into an unequivocal instrument for the complete and irreversible elimination of nuclear weapons, a commitment that must be met by all parties to the NPT.

## **Chapter II. Assessing NATO States' Compliance with Article VI**

NATO states maintain a unique position under the NPT because, with the exception of the United States, Britain, and France, they are non-nuclear weapons states under the NPT that rely on nuclear weapons as part of their military strategy. Six of the non-nuclear weapon members of NATO allow basing of U.S. nuclear weapons on their territory – weapons that will be transferred to their control in the time of war. This situation forms a fundamental inconsistency between the states' NPT responsibilities and their roles under NATO. In addition, U.S. nuclear weapons are also based in Britain, constituting the only nuclear weapons from one state based in another nuclear weapon state.

Another significant factor in analyzing NATO states' compliance is that the United States acts as *de facto* leader in NATO. U.S. nuclear policy appears to contemplate increasing options for use of nuclear weapons, and the United States will likely seek to integrate these policies into NATO. Because of the influence of U.S. policy in NATO and the importance of U.S. weapons to the alliance, analysis of U.S. policies apart from those of NATO is required.

### **A. U.S. Nuclear Policies and Disarmament Obligations**

With the Senate's refusal to ratify the CTBT in 1999, the U.S. government began a steady backslide from its disarmament commitments, including the Bush administration's hostility to the CTBT, the U.S. withdrawal from the ABM Treaty and, most recently, the positions articulated in the Nuclear Posture Review and the September 2002 National Security Presidential Directive (NSPD) 17. In our analysis, U.S. actions and planning violate many of the specific measures that NPT states parties undertook as recently as the 2000 Review Conference. We will discuss some of them here.<sup>11</sup>

#### **1. A Diminishing Role for Nuclear Weapons in Security Policies**

The 2002 Nuclear Posture Review (NPR), issued by the Department of Defense (portions of which were made available to the public) sets the course for U.S. nuclear strategy that includes renewed emphasis on the role of nuclear weapons in military planning,<sup>12</sup> contrary to the nuclear disarmament commitments which were to diminish the role of nuclear weapons. The document marks a significant retreat from the disarmament commitments made at the 2000 NPT Review Conference principally because it enlarges the circumstances under which

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<sup>11</sup> See Deller, Makhijani, and Burroughs, eds. 2003, op. cit. for a discussion of the 2000 Review Conference commitments.

<sup>12</sup> Nuclear Posture Review, Submitted to Congress on 31 December 2001. Excerpts on the Web at <http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>. Last viewed on December 11, 2002. The Nuclear Posture Review was drafted by Defense Department in response to Congress's request for a review of the direction for American nuclear forces over the next five to ten years. The NPR was signed by Secretary of Defense Rumsfeld, and at the least indicates a strong trend in U.S. nuclear planning. For an analysis of U.S. nuclear policy, see Brice Smith, "The 'Usable' Nuke Strikes Back," *Science for Democratic Action*, Vol. 11, No. 4, September 2003. On the Web at [http://www.ieer.org/sdfiles/vol\\_11/sda11-4.pdf](http://www.ieer.org/sdfiles/vol_11/sda11-4.pdf).

nuclear weapons could be used.<sup>13</sup> The NPR spells out circumstances for nuclear weapons to be used in instances other than nuclear attack, including in retaliation for use of biological or chemical weapons and also calls for their use “in the event of surprising military developments.”<sup>14</sup>

There was a further explicit expansion of potential nuclear weapons use under the December 2002 National Security Presidential Directive. That directive sets forth a strategy of counterproliferation to combat weapons of mass destruction, including the threat of use of nuclear weapons. The public version of the directive states: “as with deterrence and prevention, an effective response requires rapid attribution and robust strike capability. We must accelerate efforts to field new capabilities to defeat WMD-related assets.”<sup>15</sup> These references suggest a wider role for use of nuclear weapons, either in response to an attack or preemptively. Consistent with this approach, the nuclear weapons called for in the NPR are not just strategic weapons targeted at major cities or other nuclear systems, that is, weapons of last resort, but those that will be “integrated with new non-nuclear strategic capabilities.”<sup>16</sup> According to the Senate testimony of non-proliferation expert Joseph Cirincione’s, the NPR “sees nuclear weapons as simply another weapon, part of a continuum of military options merging seamlessly with advanced precision-guided munitions.”<sup>17</sup> The United States explicitly reserved the prerogative of using nuclear weapons against Iraq, presumably pursuant to this policy.

This policy of viewing nuclear weapons as just another instrument in a military arsenal, which increases the possibility of use of nuclear weapons, has been harshly criticized. For example, a *New York Times* editorial labeled the United States a “Nuclear Rogue” and stated: “Where the Pentagon review goes very wrong is in lowering the threshold for using nuclear weapons and in undermining the effectiveness of the [NPT]. . . Nuclear weapons are not just another part of the military arsenal. They are different, and lowering the threshold for their use is reckless folly.”<sup>18</sup>

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<sup>13</sup> Walter Pincus, “U.S. Nuclear Arms Stance Modified by Policy Study: Preemptive Strike Becomes an Option,” *Washington Post*, March 23, 2002. On the Web at: <http://www.washingtonpost.com/ac2/wp-dyn/A5080-2002Mar22?language=printer>.

<sup>14</sup> Paul Richter, “U.S. Works Up Plan for Using Nuclear Arms,” *Los Angeles Times*, March 9, 2002; Michael R. Gordon, “U.S. Nuclear Plan Sees New Targets and New Weapons,” *New York Times*, March 10, 2002.

<sup>15</sup> The White House, “National Strategy to Combat Weapons of Mass Destruction,” December 2002, p. 3. On the Web at <http://www.fas.org/irp/offdocs/nspd/nspd-wmd.pdf>. This document “is based on the classified National Security Presidential Directive 17, which the president signed in September 2002.” See Arms Control Today, January/February 2003. On the Web at [http://www.armscontrol.org/act/2003\\_01-02/document\\_janfeb03.asp](http://www.armscontrol.org/act/2003_01-02/document_janfeb03.asp).

<sup>16</sup> Nuclear Posture Review.

<sup>17</sup> Testimony of Joseph Cirincione, Director, Non-Proliferation Project Carnegie Endowment for International Peace to the Committee on Foreign Relations, United States Senate, May 16, 2002.

<sup>18</sup> “America as Nuclear Rogue,” *New York Times* editorial, March 12, 2002. U.S. violation and undermining of its commitments going back even before the Bush administration came into office, but accelerated and radicalized since then, has caused Clyde Prestowitz, who led many trade negotiations for the United States during President Reagan’s tenure, to write a book entitled *Rogue Nation: American Unilateralism and the Failure of Good Intentions* (New York: Basic Books, 2003).

## 2. The Commitment to Irreversibility and the Moscow Treaty

In the 2000 Review Conference Final Document, the parties to the NPT agreed to apply “the principle of irreversibility...to nuclear disarmament, nuclear and other related arms control and reduction measures.”<sup>19</sup> The current strategy for U.S. reductions, which is set forth in the Nuclear Posture Review and the 2002 U.S.-Russian Strategic Offensive Reductions Treaty (also known as the SORT, or the Moscow Treaty), does not comply with this undertaking. The Moscow Treaty requires both Russia and the United States to limit deployed operational strategic weapons to between 1,700 and 2,200 by the year 2012, but does not call for destruction of delivery systems, dismantlement of warheads, verification measures, or de-alerting measures to reduce the operational status of a dangerously large arsenal of weapons still left in place. Moreover, the United States has expressed its intention to maintain at least 2,400 of its removed warheads in a “responsive capability” ready for redeployment within weeks, months, or three years at the latest. This is the first time that a nuclear weapons reduction treaty explicitly allows reversibility of reductions. Also, the Treaty only has a ten-year duration and a simple right to withdrawal,<sup>20</sup> theoretically allowing for another build-up of arsenals at virtually any time after 2012.

The reductions called for in the Moscow Treaty are mainly a loose codification of a part of the NPR that calls for the reduction of “operational” strategic deployed nuclear weapons, but which provides that these reductions might be reversed and the weapons redeployed should the United States deem it fit in the long-term.<sup>21</sup> The goal of the current U.S. reductions is not irreversibility, but rather flexibility. The administration’s approach, including the creation of the Moscow Treaty and the withdrawal from the ABM treaty, has resulted in the termination of the existing treaty system – START – that had called for irreversible reductions; Russia pulled out of START II (not yet in force) and negotiations to formalize the agreed framework for irreversible reductions known as START III were also scuttled.

## 3. The Commitment to a Test Ban and the CTBT

### *The Comprehensive Test Ban Treaty*

In order to enter into force, the CTBT must be signed and ratified by 44 listed countries that have some form of nuclear technological capability, including commercial or research nuclear reactors. The U.S. Senate voted to reject ratification in 1999,<sup>22</sup> despite fervent pleas

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<sup>19</sup> Step 5 of the Thirteen Steps. 2000 Review Conference Final Document, op. cit.

<sup>20</sup> It is subject to termination on three months notice based only on the exercise of a loose and vague standard of “national sovereignty.” Text on the Web at <http://www.whitehouse.gov/news/releases/2002/05/20020524-3.html>. By contrast, past treaties have typically allowed for withdrawal only in the case of “extraordinary events” jeopardizing a state’s “supreme interests.” See, for example, Article X of the NPT, Article IX of the CTBT.

<sup>21</sup> In contrast START I requires, and Start II would have required, the destruction of delivery systems. However, the START process has been abandoned in favor of the approach set out in the Moscow Treaty and the NPR.

<sup>22</sup> The U.S. treaty ratification process requires consent by a two-thirds majority, but less than half of the Senate voted for ratification of the CTBT.

for ratification from the heads of state of its key NATO allies, Britain, Germany, and France, as well as by Japan. All other NATO states have ratified the treaty. The United States is one of 13 nuclear capable states not to have done so.

The ban against nuclear tests is inextricably linked to the NPT: it is referred to in the NPT preamble and has long been understood to be an essential element of the “cessation of the arms race” commitment under Article VI. As noted above, the ban (and the entry into force of a comprehensive test ban treaty) was also a commitment articulated as part of the 1995 indefinite extension package and was re-iterated in the thirteen steps in the Final Document of the 2000 Review Conference. The merits of a nuclear test ban treaty as an instrument of nonproliferation and, to a modest extent, as an instrument of disarmament are reasonably clear. While the design of some types of rudimentary nuclear weapons can be done without testing, it is essentially impossible to build an arsenal of the type that might be delivered accurately by intercontinental ballistic missiles without testing. Yet, despite its virtues and the fact that the legal commitment not to test has been deemed crucial to the future existence of the NPT, the United States prefers to maintain not only the right to indefinitely possess but also to further develop an already extensive nuclear weapons capability.<sup>23</sup>

The Bush administration has indicated that it will not seek ratification of the treaty (though it has not given formal notice of intent not to ratify the treaty), and has engaged in actions that undermine the treaty, including a boycott of the November 2001 UN Conference supporting its entry into force.<sup>24</sup> Current White House policy is a reversal from that of the Clinton administration, which supported ratification. However, the Clinton administration’s endorsement of the treaty was not intended as a disarmament measure; the administration also created the “Stockpile Stewardship Program” that was designed to allow it to maintain its arsenal without testing. The Stockpile Stewardship program also has the goal of maintaining the scientific and technological basis for the design of new nuclear weapons.<sup>25</sup> It is important to note in this context the U.S. nuclear weapons laboratories have a central role in certifying that the U.S. arsenal is safe and reliable and that there is no need for testing. Should laboratory budgets come under pressure, especially if important elements of the stockpile stewardship program fail to perform as expected, they will have every incentive to call for a resumption of testing.

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<sup>23</sup> Beyond the maintenance of a policy that considers resuming testing, the United States is also reported to be violating the spirit of the treaty by building a large laser fusion facility with the intent of carrying out laboratory thermonuclear explosions of up to ten pounds of TNT equivalent. France is building a similar facility. See Deller, Makhijani, and Burroughs eds. 2003, op. cit., Chapter 3.

<sup>24</sup> See Rebecca Johnson, “Boycotts and Blandishments: Making the CTBT Visible,” *Disarmament Diplomacy*, Issue No. 61, Oct.-Nov. 2001. On the Web at <http://www.acronym.org.uk/dd/dd61/61ctbt.htm>. See also Daryl Kimball, “The International Security Value of the Nuclear Test Ban Treaty,” *Arms Control Association Fact Sheet*, November 2002. On the Web at <http://www.armscontrol.org/factsheets/ctbtissue.asp>.

<sup>25</sup> Hisham Zerriffi and Arjun Makhijani, *Nuclear Safety Smokescreen: Warhead Safety and Reliability and the Science Based Stockpile Stewardship Program*, Institute for Energy and Environmental Research, Takoma park, Maryland, 1996, and Makhijani and Zerriffi, *Dangerous Thermonuclear Quest: The Potential of Explosive Fusion Research for the Development of Pure Fusion Weapons*, Institute for Energy and Environmental Research, Takoma Park, 1998.

## *The Nuclear Weapon Test Moratoria*

All five NPT nuclear weapon states continue to affirm the nuclear test moratorium, although the NPR contends that the United States needs to “maintain readiness to resume underground nuclear testing if required.”<sup>26</sup> Currently, it would take roughly two to three years to be prepared to test nuclear weapons again. Testing by the United States may precipitate testing by other states, which in turn would be a grave threat to the very stability of the NPT regime. A study performed for the U.S. Defense Threat Reduction Agency predicted a strong response if the United States breaks the existing testing moratorium:

[A] US decision to break its testing moratorium would send important signals regarding the US’s strategic priorities and its commitment to the disarmament objectives of the non-proliferation regime. In particular, progress with respect to non-proliferation objectives has often been correlated with US leadership, which would be greatly hampered by US nuclear tests. Thus, US testing, particularly if combined with stalled arms control reductions, would substantially weaken the non-proliferation regime. . . . Moreover, resumed US testing would open the opportunity for other states to resume or launch testing programs without having to pay the political costs for being the first to break the global testing moratoria.<sup>27</sup>

The study also noted concern that testing may “trigger aggressive responses” from Russia and China. Consequences of the United States breaking its moratoria could include resumption of testing by other states, and could lead to the breakdown of the NPT.

#### **4. National Missile Defense and the ABM Treaty**

The 2000 NPT Review Conference Final Document called for “The early entry into force and full implementation of START II and the conclusion of START III as soon as possible while preserving and strengthening the [ABM Treaty] as a cornerstone of strategic stability and as a basis for further reductions of strategic offensive weapons, in accordance with its provisions.”<sup>28</sup> The ABM Treaty was created by the United States and the Soviet Union in 1972 in the context of their growing armories of missiles that had several warheads, each of which could be independently targeted. These weapons were perceived to raise the possibility of a surprise first strike whose goal would be to wipe out most of the strategic nuclear forces of the other side. An extensive defense system could then prevent the remaining nuclear warheads of the adversary from harming its territory. Such a possibility is the central reason that missile defenses are viewed as weapons that create an offensive capability that increases the danger of nuclear war.

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<sup>26</sup> Nuclear Posture Review. The NPR also recommends increasing funding to improve test readiness.

<sup>27</sup> DFI International & SPARTA, Inc., *The Future Integrity of the Global Nuclear Non-Proliferation Regime: Alternative Nuclear Worlds and Implications for US Nuclear Policy*, A Study for The Defense Threat Reduction Agency Advanced Systems and Concepts Office, April 2001. On the Web at <http://www.dtra.mil/about/organization/integrity.doc>. Viewed on December 11, 2002.

<sup>28</sup> Thirteen Steps, Step 7, 2000 Review Conference Final Document, op. cit.

The ABM treaty was supposed to maintain the credibility of retaliatory deterrence based on the threat of a successful second strike, also known as the policy of Mutually Assured Destruction (MAD). The ABM Treaty was unusual in also putting limits on future technological development in the interest of preserving the “strategic balance” between the United States and the Soviet Union.

Reversing its view on preserving this strategic balance, the United States withdrew from the ABM Treaty and now emphasizes the role of missile defenses in its overall military strategy. According to the NPR, limited deployment of strategic missile defenses may occur by 2008. The U.S. withdrawal from the ABM Treaty is the first formal unilateral withdrawal of a major power from a nuclear arms control treaty after it has been put into effect.<sup>29</sup>

The 2000 Review Conference Final Document recognized the ABM Treaty as a basis for further reductions, and now that it has been terminated, it does appear that such reductions will not be undertaken pursuant to any international agreement (see discussion above). Some fear that the build up of missile defenses by the United States will spark an arms race in Asia, by stimulating China, which is already modernizing its arsenal, to build more nuclear weapons, which may, in turn, cause India and Pakistan to enlarge their arsenals.

In sum, recent policy decisions of the United States – including the Nuclear Posture Review, the Strategic Offensive Reduction Treaty with Russia, the explicit opposition to CTBT ratification by President Bush, and the unilateral withdrawal from the ABM Treaty – emphasize the continued reliance on and, indeed, expansion of the options for using nuclear weapons. These policies are in contravention of the more and more explicit commitments to nuclear disarmament that have evolved since 1995. These commitments are legal obligations of the United States. Rejecting them undermines the global efforts to enhance security through a multilateral framework.

## **5. Negative Security Assurances**

The U.S. policies claiming a right to a nuclear response to chemical and biological weapons and the targeting of non-nuclear weapon states also violate the U.S. negative security assurances. Those political assurances were part of the bargain underlying the NPT, and have arguably become legally binding, notably because they were reiterated in connection with the indefinite extension of the NPT in 1995.<sup>30</sup> The other four NPT nuclear weapon states made similar assurances.<sup>31</sup>

The 1995 U.S. negative security assurance reads:

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<sup>29</sup> For further assessment of the missile defense and its likely effects on global security, see Deller, Makhijani, and Burroughs, eds. 2003, op. cit., Chapter 4.

<sup>30</sup> Deller, Makhijani, and Burroughs, eds. 2003, op. cit., Chapter 2.

<sup>31</sup> For details see Deller, Makhijani, and Burroughs, eds. 2003, op. cit., Chapter 2.

The United States reaffirms that it will not use nuclear weapons against non-nuclear-weapon [NPT parties] except in the case of an invasion or any other attack on the United States, its territories, its armed forces or other troops, its allies, or on a state toward which it has a security commitment carried out or sustained by such a non-nuclear-weapon State in association or alliance with a nuclear-weapon State.<sup>32</sup>

The use of nuclear weapons against any NPT-compliant state not acting in association with a nuclear weapon state would violate these assurances.

The NPR reportedly contains contingency planning for use of nuclear weapons against Russia, China, North Korea, Iraq, Iran, Syria, and Libya.<sup>33</sup> The 2002 Presidential Directive appears to be consistent with the approach of targeting specific states: according to the *Washington Post*, classified portions of the directive name Iran, Syria, North Korea and Libya “among the countries that are the central focus of the new U.S. approach.”<sup>34</sup> Of these states, Iraq, Iran, Syria and Libya have not been officially declared as nuclear weapon states, and so to target them is contrary to U.S. negative security assurances.<sup>35</sup>

These aspects of U.S. nuclear weapons posture appear to be a continuation of prior policies that were in place when the United States signed on to this assurance, and thus were also in conflict with its NPT commitments.<sup>36</sup> What is new now in this regard is the reassertion of these policies when the vagueness in regard to the commitments of the United States and other nuclear weapons states parties to the NPT has been removed by the developments since 1995. This targeting policy, when viewed in conjunction with the possibility that the United States is seeking more usable weapons, such as bunker busting weapons,<sup>37</sup> puts the United States in clear contravention of its disarmament commitments and increases the possibility of a first use of a nuclear weapon by the United States.

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<sup>32</sup> Richard Boucher (Spokesman). Daily Press Briefing. U.S. Department of State, February 22, 2002. On the Web at <http://usinfo.state.gov/regional/nea/summit/text/0222state.htm>. Negative security assurances have also been noted with approval in U.N. Security Council Resolution 984, adopted unanimously (that is, including the United States and all other permanent members) on April 11, 1995. See Smith 2003, op. cit.

<sup>33</sup> Neither Syria nor Libya is believed to be developing nuclear weapons.

<sup>34</sup> Mike Allen and Barton Gellman, “Preemptive Strikes Part of U.S. Strategic Doctrine,” *Washington Post*, December 11, 2002. On the Web at <http://www.washingtonpost.com/ac2/wp-dyn/A36819-2002Dec10?language=printer>.

<sup>35</sup> Presumably, the reference to Iraq in the NPR is obsolete under the present circumstance of occupation led by the United States. There is increasing controversy over whether and to what extent Iran’s nuclear power program is weapons’ oriented. It has not been formally declared to be in non-compliance of its NPT obligations. Inspections and negotiations between Iran and the IAEA regarding more intrusive inspections (which are not legally required) are continuing as of mid-September 2003.

<sup>36</sup> The United States implied to Iraq during the Gulf War that a biological or chemical attack might prompt a nuclear response. U.S. policy has included a first-use option since Hiroshima and there have been many threats against non-nuclear states over the years. (See “A Chronology of Nuclear Threats,” *Science for Democratic Action*, v. 6, no. 4 and v. 7, no. 1 (double issue), October, 1998. On the Web at <http://www.ieer.org/ensec/no-6/threats.html>). Targeting strategy to include the Global South became more explicit in the 1990s, during the Bush I and Clinton administrations. (See Smith 2003, op. cit.)

<sup>37</sup> Nuclear Posture Review.

## **B. The NPT and Non-Nuclear NATO members**

As the United States and its NATO allies have acknowledged, all NPT parties are required to play a role in ensuring the fulfillment of the NPT's goals, including creating the conditions for nuclear disarmament. The United States reaffirmed this principle during the 2000 NPT Review Conference: "Compliance with Articles II and III by non-nuclear-weapon states is essential if the goals of the Treaty are to be achieved."<sup>38</sup> While this statement was made in the context of the NPT violations of Iraq and North Korea, it clearly applies to all non-nuclear NPT parties, as they have all committed to the elimination of nuclear weapons and to undertaking steps to achieve that goal.

NATO has acknowledged the applicability of Article VI, "They see the NPT as a balanced treaty in which the commitments of non-proliferation and disarmament are both important,"<sup>39</sup> and has reaffirmed its commitment to implementing the conclusions of the 2000 NPT review conference.<sup>40</sup> Because all NATO states rely on defense by nuclear weapons, NATO non-nuclear weapons states must be held to the same Article VI standards as those states entitled to possess nuclear weapons. As such, non-nuclear weapons NATO states should have made demonstrable steps to end their reliance on defense involving nuclear weapons. Instead, NATO doctrine considers nuclear weapons the supreme guarantee of NATO's security, and intends to rely on them for the foreseeable future. Their commitment to the CTBT is also being challenged by the possibility of U.S. resuming testing. This analysis suggests not only the potential destruction of the NPT and the further de-legitimization of the CTBT, but that NATO states' consent to U.S. policies assists in undermining the legal framework regulating security affairs – a system on which NATO is itself based.

### **1. NATO Strategy Still Relies on Nuclear Deterrence (1999 Strategic Concept)**

The declared purpose of deterrence as it existed at the creation of NATO and through the Cold War was that it was intended to ward off the threat of conventional or nuclear Soviet aggression. With the end of the Cold War and the buildup of the militaries of Western countries, the capabilities of the NATO alliance now far surpass any other state. The combined military budget of NATO and its members is about three-fifths of the global budget.<sup>41</sup> The threat of massive conventional or nuclear attack by another state no longer

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<sup>38</sup> Statement by U.S. Ambassador Norman A. Wulf to the First Session of the Preparatory Committee Meeting for the 2005 NPT Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, April 8, 2002. On the Web at <http://www.acronym.org.uk/npt/2002us.htm>.

<sup>39</sup> NATO Fact Sheets, *NATO's Positions Regarding Nuclear Non-proliferation, Arms Control and Disarmament and Related Issues*, August 9, 2000. On the Web at <http://www.nato.int/docu/facts/2000/nato-npg.htm>. This document contains the following disclaimer: "This text is not a formally agreed NATO document and, therefore, does not necessarily represent the official views of individual member governments on all policy issues discussed."

<sup>40</sup> NATO Press Release, Final Communiqué, Ministerial Meeting of the Defence Planning Committee and the Nuclear Planning Group, June 6, 2002, para. 8. On the Web at <http://www.nato.int/docu/pr/2002/p02-071e.htm>.

<sup>41</sup> Anup Shah, *Arms Trade: A Major Cause of Suffering*, On the Web at <http://www.globalissues.org/Geopolitics/ArmsTrade/Spending.asp>.

exists. The 85% reduction of NATO's sub-strategic nuclear forces since 1991 reflects that reality.<sup>42</sup> Nevertheless, NATO still holds firm to a policy of nuclear deterrence. The 1999 NATO *Strategic Concept*, which presents the framework for NATO's operations and expresses NATO's purpose and security tasks, set forth the following principle in its guideline for alliance forces:

[T]he Alliance will maintain for the foreseeable future an appropriate mix of nuclear and conventional forces based in Europe and kept up to date where necessary, although at a minimum sufficient level. Taking into account the diversity of risks with which the Alliance could be faced, it must maintain the forces necessary to ensure credible deterrence and to provide a wide range of conventional response options. But the Alliance's conventional forces alone cannot ensure credible deterrence. *Nuclear weapons make a unique contribution in rendering the risks of aggression against the Alliance incalculable and unacceptable. Thus, they remain essential to preserve peace.*

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The supreme guarantee of the security of the Allies is provided by the strategic nuclear forces of the Alliance, particularly those of the United States; the independent nuclear forces of the United Kingdom and France, which have a deterrent role of their own, contribute to the overall deterrence and security of the Allies.<sup>43</sup>

The *Strategic Concept* emphasizes that Europe-based nuclear forces committed to NATO play a special role; they "provide an essential political and military link between the European and the North American members of the Alliance."<sup>44</sup>

A June 2002 meeting of NATO's Defence Planning and Nuclear Planning Groups reaffirmed the "great value" placed on these nuclear forces and noted that in this regard, "deterrence and defence, along with arms control and non-proliferation, will continue to play a major role in the achievement of the Alliance's security objectives."<sup>45</sup> But this is an argument that encourages proliferation. If the alliance that has by far the most powerful and vast conventional arsenal in the world needs nuclear weapons for deterrence, what about smaller countries? This deterrence policy is counter both to the aim of disarmament, to the spirit of negative security assurances, and of non-proliferation.

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<sup>42</sup> *NATO Handbook*, Chapter 2, Updated October 8, 2002. On the Web at <http://www.nato.int/docu/handbook/2001/hb0206.htm>.

<sup>43</sup> NATO Press Release, *The Alliance's Strategic Concept*, April 24, 1999, paras. 46 and 62. On the Web at <http://www.nato.int/docu/pr/1999/p99-065e.htm>. Emphasis added.

<sup>44</sup> *The Alliance's Strategic Concept*, op.cit., para. 63.

<sup>45</sup> Final Communiqué, June 6, 2002, op.cit., para. 8.

## 2. The U.S. Enduring Reliance on Nuclear Weapons Extends to NATO

The most important and powerful member of NATO, the United States, has not only proclaimed an “enduring” and essentially permanent reliance on nuclear weapons, it has shown its determination that such reliance also be extended to NATO without any time limit whatsoever. The Pentagon’s has described the relationship as follows:

The United States has a permanent and vital national interest in preserving the security of our European and Canadian Allies. Conversely, our Allies in Europe recognize that their security is inextricably tied to that of North America. While there are many dimensions to the transatlantic security relationship, the presence of significant and highly capable U.S. military forces in Europe will remain, for the foreseeable future, a critical linchpin. Behind that presence stands the full array of U.S.-based conventional forces, America’s unsurpassed nuclear deterrent, our formidable economic power, and our demonstrated political will to defend democratic ideas and values.<sup>46</sup>

In recent years, several non-nuclear members of NATO have voiced opposition to the enduring reliance on nuclear weapons. In particular, Germany and Canada have argued this point. For instance, the Canadian Standing Committee on Foreign Affairs and International Trade has stated that that the viability of the NPT and achievement of disarmament require reducing “the political legitimacy and value of nuclear weapons.”<sup>47</sup> However, efforts by its NATO allies to persuade the United States to take steps in the spirit of its NPT commitments have so far ended in failure.

Whether U.S. expansion of options for using nuclear weapons such as those contained in the Nuclear Posture Review, will be further integrated into NATO policy is still in debate. The United States has certainly been viewed as making this push, but observers have noted a resistance by NATO to incorporating new U.S. preemptive strategies using conventional or nuclear forces.<sup>48</sup> Even if NATO countries are able to resist full integration of U.S. policies, NATO will not adopt policies that are contrary to U.S. positions, as NATO decisions are adopted by consensus.

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<sup>46</sup> Department of Defense, *Strengthening Transatlantic Security, A U.S. Strategy for the 21st Century*, December 2000. On the Web at <http://www.defenselink.mil/pubs/eurostrategy2000.pdf>.

<sup>47</sup> Report of the Canadian Standing Committee on Foreign Affairs and International Trade, *Canada and the Nuclear Challenge: Reducing the Political Value of Nuclear Weapons for the Twenty-First Century*, December 1998. Chapter 1. On the Web at <http://www.parl.gc.ca/InfoComDoc/36/1/FAIT/Studies/Reports/faitrp07-e.htm>. See also Thomas Graham, Jr. and Jack Mendelsohn (Lawyers Alliance for World Security), “NATO’s Nuclear Weapons Policy and the No-First-Use Option,” *International Spectator*, Volume 34, No. 4, October-December 1999. pages 5-10. On the Web at <http://www.iai.it/pdf/articles/graham%20and%20mendelssohn.pdf>.

<sup>48</sup> See, for example, reports of NATO military exercise CMX 2002 in early 2002, Annalisa Monaco and Sharon Riggle, “NATO Squares Off with Middle East Foe: Threat of WMD challenges Alliance,” *NATO Notes*, Vol. 4, No. 2, March 2002. On the Web at <http://www.cesd.org/natonotes/notes42.htm>. See also Dan Plesch and Martin Butcher, “NATO, Nuclear Weapons, and the Prague Summit,” *RUSI Journal*, Vol. 147, Issue 5, October 2002. From the Royal United Services Institute for Defense Studies. On the Web at <http://www.rusi.org/cgi-bin/public/view.cgi?object=obj116&uniqueid=JA00248>.

### 3. NATO Members Are Abetting U.S. Rejection of a CTBT

All NATO states have ratified the CTBT, with the exception of the United States. Even though the treaty has not entered into force, under the laws that govern treaty making, states must not take actions that would defeat the object and purpose of the treaty.<sup>49</sup> Article I of the Treaty states the principal commitment for all states parties, including prohibiting parties from encouraging any other state to carry out nuclear tests of any kind.

1. Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.
2. Each State Party undertakes, furthermore, to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.

NATO has, in the past, recognized the obligation to take action to promote the treaty's entry into force. The 2001 NATO Handbook states:

One of the most significant practical achievements of the [NPT] Review Conference [in 2000] was agreement on the entry into force of the Comprehensive Nuclear Test-Ban Treaty (CTBT), as soon as the required ratifications have been completed. NATO member countries are committed to working to secure the necessary signatures and ratification in order to achieve an early entry into force of the Treaty.<sup>50</sup>

NATO states, notably Canada, Britain, France, and Germany, all key allies of the United States, have made urgent appeals to the United States to ratify the CTBT. However NATO is no longer in a position to endorse the CTBT's entry into force because U.S. opposition prohibits consensus on the issue. For example, a June 2002 press statement from the NATO Defence Planning Committee and the Nuclear Planning Group expresses support for the existing moratoria on testing, but mentions nothing of the CTBT.<sup>51</sup>

And despite vociferous pressure from its NATO allies to adopt the CTBT, United States appears positioned to resume testing. The Bush administration has no intention of re-submitting the CTBT for ratification, since it wants to keep open the option of nuclear testing. That puts it in violation of the above-cited NATO policy to work to get the ratification needed for an "early entry into force" of the CTBT. Hence, a nuclear

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<sup>49</sup> Article 18 of the Vienna Convention on the Law of Treaties states: "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed." On the Web at [http://www.unog.ch/archives/vienna/vien\\_69.htm](http://www.unog.ch/archives/vienna/vien_69.htm).

<sup>50</sup> *NATO Handbook*, op. cit., Chapter 6. On the Web at <http://www.nato.int/docu/handbook/2001/hb060101.htm>. Viewed on 14 October 2002.

<sup>51</sup> Final Communiqué, June 6, 2002, op. cit., para. 8.

partnership with the United States by other NATO countries, which have all ratified the CTBT already, puts them in a dubious position of abetting a violation of NATO policy.

If the United States does resume testing, we believe that it will cause NATO states to violate the spirit of their CTBT commitments. NATO integrates much of U.S. nuclear policy, and many NATO states are involved in the planning aspects of the use of nuclear weapons on behalf of NATO. If the United States tests a nuclear weapon, any new weapons resulting from the testing may be integrated into NATO policy. This would be incompatible with the obligations of the NATO allies of the United States under the second paragraph of Article I of the CTBT, quoted above, according to which parties to the treaty cannot encourage any other country to carry out a nuclear explosion.

For NATO states to continue involvement with nuclear planning after the United States tests a weapon would mean that NATO states are tacitly encouraging testing by going along with U.S. nuclear policy. It is incumbent on the NATO allies of the United States to do everything they can to make this contradiction between their NATO membership and the resumption of testing clear in order to dissuade the United States from carrying out a nuclear test. In addition to violating at least the spirit of the CTBT, any encouragement of testing weapons would undermine the disarmament commitments of the NPT, which recognizes a test ban as a cornerstone of the global non-proliferation regime.<sup>52</sup>

#### **4. NATO Nuclear Sharing Is at Odds with NPT Commitments**

The NATO nuclear sharing arrangement comprises two components: one is the political mechanism, known as the Nuclear Planning Group, which consists of consultations among defense ministers of NATO member states (with the exception of France)<sup>53</sup> regarding specific policies relating to nuclear forces. The Nuclear Planning Group consults on a broad range of nuclear issues: “safety, security and survivability of nuclear weapons;” deployment issues; arms control and proliferation.<sup>54</sup>

The second component of nuclear sharing is the operational sharing of nuclear weapons whereby the United States maintains control of the weapons, which are free fall bombs in dual-use aircraft, until such time that a decision to use them has been made. At that point, control of the weapons is transferred to those other NATO members on whose territory they are stored. As a result of this policy, non-nuclear weapon states “have the capability to conduct a nuclear attack, using U.S. nuclear weapons and national delivery means during times of war.”<sup>55</sup> Estimates tally the number of weapons between 150 and 180 weapons in thirteen bases in seven NATO countries - Belgium, Germany, Greece, Italy, Netherlands,

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<sup>52</sup> See Deller, Makhijani, and Burroughs, eds. 2003, op. cit., Chapter 2, Section E.

<sup>53</sup> All NATO states except for France participate in the Nuclear Planning Group. *NATO Handbook*, op. cit., Chapter 13. Updated August 29, 2001. On the Web at <http://www.nato.int/docu/handbook/2001/hb130103.htm>. Viewed on November 12, 2002.

<sup>54</sup> *NATO Handbook*, op. cit., Chapter 7. Updated August 21, 2001. On the Web at <http://www.nato.int/docu/handbook/2001/hb070103.htm>. Viewed on November 12, 2002.

<sup>55</sup> Otfried Nassauer, “NATO’s Nuclear Posture Review, Should Europe End Nuclear Sharing?” *BITS Policy Note* 02.1, April 2002. On the Web at <http://www.bits.de/public/policynote/pn02-1.htm>.

Turkey and Britain. All except Britain are non-nuclear parties to the NPT. Most if not all of the weapons are B-61 free fall nuclear bombs.<sup>56</sup>

Both aspects of nuclear sharing are intended to allow non-nuclear weapon countries to be able to use weapons at a time of war. There is a strong argument that the operational aspect, that is the physical placement of nuclear weapons on non-nuclear weapon territory, violates the non-transfer and non-acquisition provisions of the NPT, even though the NATO arrangement pre-dated the entry into force of the NPT.<sup>57</sup> Article I of the NPT prohibits nuclear weapon states parties from transferring weapons to non-nuclear states:

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly...

Article II creates a corresponding requirement for non-nuclear weapon states:

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly...

Nevertheless, the United States asserts that the program complies with the NPT. Reduced to its essence, the U.S. contention is that the transfer of control has not yet occurred, and would only take place once a war had begun, and at that point, the NPT “would no longer be controlling” (see below).<sup>58</sup>

This argument in defense of the NATO nuclear sharing was first articulated in a document entitled “Questions on the Draft Non-Proliferation Treaty Asked by US Allies Together with Answers Given by the United States” which was submitted along with the Letter of Submittal on the NPT sent to the US president by the Secretary of State, Dean Rusk, on July 2, 1968.<sup>59</sup>

It includes the following relevant interpretations of the obligations under Articles I and II:

1. Q. What may and what may not be transferred under the draft treaty?

A. The treaty deals only with what is prohibited, not with what is permitted.

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<sup>56</sup> Ibid. According to this report, up to 360 bombs can be deployed on operational European bases.

<sup>57</sup> Ibid. See also Martin Butcher, Otfried Nassauer, Tanya Padberg and Dan Plesch, *Questions of Command and Control: NATO, Nuclear Sharing and the NPT*, PENN Research Report, 2000.1. Project on European Nuclear Non-Proliferation, March 2000. p.23. On the Web at: <http://www.bits.de/public/pdf/00-1command.pdf>.

<sup>58</sup> Otfried Nassauer, “Nuclear Sharing in NATO: Is It Legal?” *Science for Democratic Action*, Vol. 9, No. 3, May 2001. On the Web at [http://www.ieer.org/sdafiles/vol\\_9/9-3/nato.html](http://www.ieer.org/sdafiles/vol_9/9-3/nato.html).

<sup>59</sup> See Mohamed I. Shaker, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979*. London: Oceana Publications, 1980. vol. I, p. 234, and PENN Project on European Nuclear Non-proliferation, *NATO Nuclear Sharing and the NPT – Questions to be Answered*, PENN Research Note 97.3, June 1997. On the Web at <http://www.bits.de/public/researchnote/rn97-3.htm>.

3. Q. Does the draft treaty prohibit arrangements for the deployment of nuclear weapons owned and controlled by the United States within the territory of non-nuclear NATO members?

A. It does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling.<sup>60</sup>

The rationale relied upon by the United States that it may transfer its weapons to NATO non-nuclear weapon states raises several concerns. First, the negotiating record of the NPT reveals that many countries may not have been aware that the United States maintained this interpretation of its NPT obligations. According to the U.S. Senate hearings on ratification of the NPT, the Question and Answer document was presented to the Soviet Union and “key members” of the Eighteen Nation Disarmament Committee prior to the time that the NPT opened for signature on July 1, 1968,<sup>61</sup> but there is no indication that other states were similarly apprised. While the document reportedly received no objection from the Soviet Union or the unspecified “key members” of the ENDC, the remainder of states may not have known the U.S. interpretation until long after they had signed the treaty, when the document was made public as part of the Senate ratification hearings.

The claim that the NPT does not control in times of war is also troubling. The stated rationale for this interpretation is that, as set forth in the preamble, the NPT is meant “to make every effort to avert the danger of such a war,” meaning nuclear war, which is language contained in the preamble. If the NPT is unable to avert a war, the U.S. asserts, then it no longer is controlling on the parties. However, this supposed exception is not found in the text of the NPT. The US argument begs the question of what type of war would render the treaty void. The Johnson administration referred to a “general war.” The administration did not identify which types of conflicts would make up a general war, but explained what conditions would *not* constitute a general war: “At the other extreme would be a limited, local conflict, not involving a nuclear weapon-state. In this case the treaty would remain in force.”<sup>62</sup>

The term general war has been defined by the U.S. Department of Defense to mean “[a]rmed conflict between major powers in which the total resources of the belligerents are employed, and the national survival of a major belligerent is in jeopardy.”<sup>63</sup> This suggests

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<sup>60</sup> PENN Research Note 97.3, op. cit., Annex 1.

<sup>61</sup> The deputy director of the US Arms Control and Disarmament Agency (ACDA), Adrian Fisher, told the Senate Foreign Relations Committee that the *Questions and Answers* document was “seen by the Soviets and key members of the ENDC before it was made public and there was no objection. In view of the fact it is public, and has been referred to on a public hearing, I assume all countries in the world are on notice of our intention.” Non-Proliferation Treaty Hearings before the Committee on Foreign Relations, US Senate, Executive H, 90-2, 18 and 20 February 1969, p.340. Emphasis added. As cited in PENN Research Report, 2000.1. op.cit., p.23.

<sup>62</sup> “Non-Proliferation Treaty”, Hearings before the Committee on Foreign Relations, US Senate, Executive H, 90-2, 18 and 20 February 1969, p. 424. As cited in PENN Research Report, 2000.1, op. cit., p. 26.

<sup>63</sup> *DOD Dictionary of Military and Associated Terms*. On the Web at <http://www.dtic.mil/doctrine/jel/doddict/data/g/index.html>

that general war is one in which conventional war can develop into a nuclear conflict between major powers or one that begins with nuclear weapons use. The Pentagon's definition of general war does not rule out the possibility of first use.<sup>64</sup> While there is no official parallel definition of "general war" that has been adopted by NATO, the U.S. definition could lead to a situation in Europe in which the control of nuclear weapons could be transferred to NATO non-nuclear weapon states under a variety of circumstances. In other words, the U.S. approach to general war gives it and NATO a good deal of flexibility in when nuclear sharing and nuclear weapons use might officially be considered legitimate.

This doctrine creates an unstable system under the NPT that allows NATO states to create circumstances for an automatic exemption to terminate the treaty's obligations without complying with the terms of the NPT withdrawal provision.<sup>65</sup> Belgian Minister of Foreign Affairs Louis Michel defended this view in a speech to Belgian Parliament, where he stated that the NPT "does not apply in time of war. According to the Vienna Convention [on the law of treaties] arms-related treaties or treaties with such implications are suspended in time of war."<sup>66</sup>

However, the Vienna Convention makes no specific reference to suspension of any treaties in time of war. It does permit suspension of operation of a treaty if a material breach has occurred,<sup>67</sup> but it is not clear that U.S. policy for declaring the NPT as "not controlling" requires a material breach of the NPT by another state. The Vienna Convention also requires unanimous agreement for the suspension of operation to apply to all parties. Moreover, there are specific provisions that any state must follow to invoke a suspension of the operation of a treaty, which include three months' written notice allowing all parties to raise objections.<sup>68</sup> In order to maintain the stability and credibility of the regime, both the NPT and the laws governing treaty making place restraints on states' ability to terminate their obligations. Viewed in the context of the increasingly specific commitments to disarmament, the continuation of this policy where NATO state may receive control of nuclear weapons is certainly violating the spirit of Article VI, and is also inconsistent with the NPT's non-acquisition provisions.

## **5. NATO Strategy Allows for a Possible First Use of Nuclear Weapons**

The 1999 Strategic Concept recognizes the changes in the world military situation since the end of the Cold War and notes that "NATO's ability to defuse a crisis through diplomatic and other means or, should it be necessary, to mount a successful conventional defence has significantly improved." It continues, "The circumstances in which any use of nuclear

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<sup>64</sup> PENN Research Report, 2000.1, op. cit., Chapter Two.

<sup>65</sup> Article X of the NPT states: "Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country."

<sup>66</sup> Louis Michel, reply to oral question, Belgian Parliament, May 11, 2000. Translation by Karel Koster, in Karel Koster, "An Uneasy Alliance: NATO Nuclear Doctrine & the NPT," *Disarmament Diplomacy*, Issue No. 49, August 2000.

<sup>67</sup> Vienna Convention on the Law of Treaties, para. 60.

<sup>68</sup> See Vienna Convention paras. 60, 65, 67.

weapons might have to be contemplated by them are therefore extremely remote.” While these circumstances may be perceived as remote (more on that subject below), and while a first use option is not explicitly mentioned in the document in those terms, NATO does not renounce the possibility that it may strike first with nuclear weapons, even against a non-nuclear state. NATO has described its policy regarding the possible first use of nuclear weapons as follows:

NATO does not follow either a nuclear First-Use or No-First-Use policy. The Alliance does not determine in advance how it would react to aggression. It leaves this question open, to be decided as and when such a situation materialized. In so doing, Allies seek to ensure uncertainty in the mind of any aggressor about the nature of the Allies' response to aggression.<sup>69</sup>

This statement clearly implies that while NATO does not have a policy of necessarily resorting to nuclear weapons, it does keep open the option of first use even in a conflict with a non-nuclear state. Before addressing the legal significance of a possible first use policy, the security context must be considered. The primary rationale for the first-use policy, the Soviet threat, has been rendered obsolete. As explained by Jack Mendelsohn, the Executive Director of LAWS:

The alliance's threat during the Cold War to use nuclear weapons in response to non-nuclear aggression, however contradictory and self-detering such a policy might have been, was considered helpful in reassuring Europe that some military response was available to counter the Warsaw Pact's significant quantitative advantage in conventional forces. Today, however, the alliance enjoys an even greater conventional superiority over any potential enemy or combination of enemies in Europe than the Warsaw Pact ever had over NATO.<sup>70</sup>

Opponents of a no-first-use policy emphasize the “calculated ambiguity” that may deter an aggressor from using chemical or biological weapons, because these actions may be met by a nuclear response. However, the vast superiority of conventional forces as a deterrent diminishes the need to rely on a calculated ambiguity. Moreover, some analysts suggest that the threat of first use as a deterrent to a chemical or biological attack is less credible now that similar threats made during the first gulf war have been revealed to be posturing.<sup>71</sup>

The first use of nuclear weapons in reprisal for chemical or biological attacks would also violate the laws of war. The use of nuclear weapons, or any weapon, including in reprisal,

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<sup>69</sup> NATO Fact Sheets 2000, op. cit.

<sup>70</sup> Jack Mendelsohn, “NATO's Nuclear Weapons: The Rationale for 'No First Use',” *Arms Control Today*, July/August 1999. On the Web at [http://www.armscontrol.org/act/1999\\_07-08/jmja99.asp](http://www.armscontrol.org/act/1999_07-08/jmja99.asp).

<sup>71</sup> Ibid., citing for example, Colin Powell, *My American Journey*, pp. 472 and 486; George Bush and Brent Scowcroft, *A World Transformed*, p. 463; and James A Baker, *The Politics of Diplomacy*, p. 359. See also Project on European Nuclear Non-Proliferation, PENN Newsletter No. 9, December 1999. On the Web at <http://www.bits.de/public/pennnews/pennnews9.htm>.

must meet the fundamental requirements of necessity, proportionality, and discrimination. Thus the International Court of Justice affirmed that states must “never use weapons that are incapable of distinguishing between civilian and military targets.” There are no realistic situations in which nuclear weapons used in response to a biological or chemical attack could meet those requirements.

Moreover, there is a clear contradiction in NATO retaining the possibility of first use, including against non-nuclear weapon states and the NATO nuclear weapon states’ negative security assurances, which have arguably achieved legal status because non-nuclear weapon states demanded these assurances in exchange for the indefinite extension of the NPT in 1995. If the nuclear weapon states have made such a pledge, then it is illogical that an alliance of these and non-nuclear weapon states should codify a lesser standard. However, the United States is already seen as violating its assurances with its list of non-nuclear weapon state target countries, and its possible nuclear response to chemical and biological weapons. While NATO policy does not have a list of target states as yet, its overall policy implies that any country could be a target of NATO nuclear weapons use. Moreover, as noted above, a possible first use policy against non-nuclear states is not in keeping with Security Council Resolution 984 of 1995, which noted negative security assurances with approval.

NATO describes the possibility of use of nuclear weapons as “extremely remote,” yet NATO is expanding its potential for armed conflict with a new policy permitting out of area engagement. According to the *Washington Post*, NATO “quietly negotiated a new agreement” for a global role, which was ratified at a meeting in Reykjavik on May 14, 2002.<sup>72</sup> The new global NATO objectives were confirmed in the Final Declaration of the Prague 2002 Summit: NATO’s global objectives include an ability “to field forces that can move quickly to wherever they are needed, upon decision by the North Atlantic Council, to sustain operations over distance and time, including in an environment where they might be faced with nuclear, biological and chemical threats, and to achieve their objectives.”<sup>73</sup> To meet these objectives, NATO announced the creation of a “NATO Response Force (NRF) consisting of a technologically advanced, flexible, deployable, interoperable and sustainable force including land, sea, and air elements ready to move quickly to wherever needed, as decided by the Council.”<sup>74</sup>

NATO began conducting out of area operations during the 1990s in Bosnia and Yugoslavia. Those operations were purportedly carried out for humanitarian reasons. There are no such limits placed on future out of area engagement; rather the Prague Summit Declaration states that the purpose of these changes is to allow NATO to respond to security threats including those “posed by terrorism and by the proliferation of weapons of mass destruction and their means of delivery.”<sup>75</sup> On August 11, 2003, NATO took over command of the security

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<sup>72</sup> Robert G. Kaiser and Keith B. Richburg, “NATO Looking Ahead to a Mission Makeover,” *Washington Post*, November 5, 2002.

<sup>73</sup> Prague Summit Declaration, November 21, 2002, para. 4. On the Web at <http://www.nato.int/docu/pr/2002/p02-127e.htm>.

<sup>74</sup> Prague Summit Declaration, para. 4(a).

<sup>75</sup> Prague Summit Declaration, para. 3.

force in Afghanistan from the United Nations, though formally the operation remains under the United Nations mandate. This is the first NATO troop deployment outside Europe.<sup>76</sup>

With a policy in place that allows first use, the possibility that non-nuclear weapon states may receive control over use of nuclear weapons (as described in the discussion on nuclear sharing), and an expanded mandate for NATO engagement, the theoretical possibilities for NATO to use a nuclear weapon have expanded, in contravention of the requirement for a diminishing role for nuclear weapons pledged by NPT states parties in the 2000 Review Conference final declaration. In failing to live up to the spirit of their NPT commitments, NATO states are also signaling to others the strategic necessity of nuclear weapons under a variety of circumstances. As the Lawyers Alliance for World Security (LAWS) asserts, if NATO continues its policy permitting the first use of nuclear weapons, “it will be increasingly difficult to convince technologically sophisticated and/or politically ambitious states to continue to forswear the nuclear option.”<sup>77</sup>

As noted above, several non-nuclear members of NATO have voiced support for a diminishing role for nuclear weapons, and in 1998 (in anticipation of the 1999 NATO 50<sup>th</sup> Anniversary Summit) Germany specifically urged that a no-first-use policy be adopted to move NATO closer to nuclear disarmament.<sup>78</sup> The proposal, however, did not receive endorsement from any other NATO state.

In sum, the refusal to abandon the possibility of first use violates the NPT commitment to a diminishing role for nuclear weapons; it increases the possibility of the use of nuclear weapons; it signals to other countries the political and military value of nuclear weapons and it goes against the negative security assurances pledged by the nuclear weapon NATO members, Britain, France and the United States, in conjunction with the indefinite extension of the NPT. On the other hand, the reasons for maintaining a first use policy are dubious at best. The same arguments that we have made above regarding no-first-use also apply to the U.S.-Japanese alliance. Japan also must demand that the U.S. adopt a no-first-use policy and on no account threaten to use or actually use nuclear weapons first on its behalf in any conflict. Yet, in an alarming development, there is increasing discussion in Japan whether and under what circumstances Japan might itself acquire nuclear weapons.<sup>79</sup>

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<sup>76</sup> Press conference in Kabul, Afghanistan, 11 August 2003, transcript as posted on the NATO website at <http://www.nato.int/docu/speech/2003/s030811h.htm>. Viewed on 26 September 2003.

<sup>77</sup> Graham and Mendelsohn 1999, op. cit., p. 2.

<sup>78</sup> William Drozdiak, “Bonn Proposes that NATO Pledge No-First-Use of Nuclear Weapons,” *Washington Post*, November 23, 1998; see also Wade Boese, “Germany Raises No-First-Use Issue at NATO Meeting”, *Arms Control Today*, November/December 1998.

<sup>79</sup> Yuri Kageyama, “Japan Considers Nuclear Options: N. Korean Threat Undermines Taboo,” Associated Press, posted on August 10, 2003 at <http://www.myrtlebeachonline.com/mld/myrtlebeachonline/news/nation/6500557.htm>.

### Chapter III. Role of Non-Nuclear NATO Members in Promoting Disarmament

We have argued briefly here and in more detail elsewhere that the United States is in substantial violation of its treaty commitments under the NPT and has no present or foreseeable intention of meeting its commitment to nuclear disarmament or to a permanent nuclear test ban.<sup>80</sup> The United States government, to the distress of a substantial number of its own people, and an even larger proportion of people and governments of its allies, is rejecting its international obligations in favor of reliance on its military strength.

Many NATO members have already begun urging the United States to meet its treaty obligations on a variety of fronts including the CTBT, the NPT, and the Kyoto Protocol. They have also advocated U.S. participation in the International Criminal Court, or at the very least and end to the efforts to undermine it. As former Deputy Secretary of State Strobe Talbott observed:

[T]he United States has rarely been so at odds with so many of its traditional friends on so many issues... This general dispute has naturally taken its toll on NATO, an organization that is itself based on a treaty, on the notion of America as first among equals, and on the principles of common interest, shared responsibility, concerted resolve, collective action, and decision by consensus.<sup>81</sup>

Clyde Prestowitz, a lifelong Republican, has argued at length in his book that the friends of the United States around the world are increasingly viewing it as “The Rogue Nation,”<sup>82</sup> a most unfortunate development for the country that did so much to bring the idea of the rule of law into the world’s political and legal arrangements.

So far, other NATO members have failed to gain U.S. support for the CTBT and for better compliance with the NPT. Moderate persuasion has failed. Indeed, U.S. policies in regard to nuclear weapons have become more militant and more rejectionist in relation to the CTBT and to U.S. NPT obligations. This has created an uncomfortable problem for the allies of the United States, and especially its non-nuclear allies. They must either put more pressure on the United States to comply, or risk falling into non-compliance with their NPT and CTBT obligations themselves.

The NATO allies, as members of the world’s most powerful military alliance, have a heavy responsibility for steering the United States and the world away from the potentially disastrous course it is now leading. Yet their current policies as part of NATO are abetting a set of U.S. actions that, along with other incidents of proliferation, are rapidly putting the NPT in grave peril. The current proliferation situation is alarming, indeed. The volatility of the Middle East conflict, which shows no sign of abating, is made worse by the fact that

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<sup>80</sup> We wish to recall here that the analysis here is largely based on Deller, Makhijani, and Burroughs, eds. 2003, op. cit.

<sup>81</sup> Strobe Talbott, “From Prague to Baghdad: NATO at Risk,” *Foreign Affairs*, November/December 2002, p. 47-48.

<sup>82</sup> Prestowitz 2003, op. cit.

Israel has nuclear weapons. Iran appears to have growing nuclear ambitions. However, it should be noted that, as of this writing, Iran has not been officially declared in non-compliance with its NPT obligations. However, leading Iranians, pointing to Israel, India, Pakistan, and the United States have pointed to a double standard and raised questions about why they should continue to forswear nuclear weapons.<sup>83</sup> North Korea withdrew from the NPT in January 2003 without the requisite three months notice and is likely pursuing a nuclear weapons program. That determination may have been strengthened by the U.S.-British war on Iraq, which was attacked without explicit U.N. Security Council authorization even after it submitted to U.N.-mandated inspections. These circumstances strongly suggest that all parties to the NPT must do whatever they reasonably can to strengthen it, or the NPT may fall apart.

We propose that the NATO allies of the United States adopt policies in the following areas in order to resolve the conflict between their membership in NATO and their commitments under the NPT and CTBT:

- Inform the United States that (i) it is essential that the U.S. respect the nuclear test moratorium and resume the path to CTBT ratification and (ii) a nuclear test by the United States would put their CTBT and NPT obligations in conflict with their NATO obligations, possibly forcing a difficult choice upon them and creating a very volatile situation for Europe, NATO, and the world.
- Urge an immediate, explicit, and unconditional no-first-use nuclear weapons policy for NATO.
- Permanent withdrawal of U.S. nuclear weapons from the six non-nuclear member states of NATO and no basing of nuclear weapons on the territory of another state, even if the other state is a nuclear-weapon state.
- An end to the nuclear sharing policy of NATO.

The achievement of the last two items would essentially make for a non-nuclear NATO and remove the threat that U.S. actions may make the non-nuclear members of NATO in non-compliance with the CTBT and NPT. That would also put them in a far better position to help salvage the NPT and CTBT and help put the world on a course to security and complete and universal nuclear disarmament, as required by the NPT.

While the specifics of the U.S. alliance with Japan are different, the broad arguments we have made here also apply to that relationship. Therefore, we also recommend that Japan adopt these general policies in regard to its alliance with the United States, to the extent that they apply.<sup>84</sup> Specifically, Japan should also make explicit to the United States that a nuclear test would put its commitments in its alliance with the United States in conflict with the spirit of its CTBT and NPT obligations. Japan should also urge the United States to adopt an unconditional no-first-use policy.

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<sup>83</sup> Karl Vick, "Iran Maintains Its Right to Develop Nuclear Weapons: Iranians Say They Need to Balance Israel's Nuclear Power with Nukes of their Own," *Washington Post*, March 11, 2003. On the Web at <http://www.washingtonpost.com/wp-dyn/articles/A6842-2003Mar10.html>.

<sup>84</sup> The United States and Japan do not have a nuclear sharing agreement and U.S. nuclear weapons are not based on Japanese territory.

With regard to the policies in response to testing, we note that a renewal of testing would be a serious violation of the NPT. We believe that the stakes are so high that the NATO allies of the United States should do all they can to insist that the United States respect the nuclear test moratorium indefinitely.

The issues of no-first-use and nuclear sharing can be considered together. Ending nuclear sharing and adopting a no-first use policy can be made compatible with consultation in NATO on nuclear weapons questions. NATO will, after all, need to consider, how it is going to proceed to play its role in achieving complete nuclear disarmament and such discussions will be needed, if only in that context. If the United States refuses to remove its nuclear weapons, states should enact domestic laws banning the basing of nuclear weapons on their territories. One model for this program would be the domestic legislation of New Zealand which created a nuclear free zone for its territories.

The dangerous patterns that have put the NPT in jeopardy on several fronts must be reversed. Nuclear weapon states *and their allies*, in addition to seeking the enforcement of the non-proliferation obligations, must meet their NPT obligations. In the grave crisis that is evolving in the world, the measures that we advocate here appear to be the minimal obligations of the NATO allies of the United States if they are to continue to be part of the NPT and the CTBT in good faith.<sup>85</sup> These steps should be taken on an urgent basis, if possible before the Preparatory Committee meeting in April-May 2004 of the parties to the NPT. In any case, it is necessary to take these steps prior to the 2005 Review Conference, because that will be the point during which countries will be called upon to show their commitments to preserving the NPT and the CTBT.

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<sup>85</sup> Of course, there is also more that they could do to promote the achievement of the 13 steps specified in the 2000 Review Conference. For instance, it would be highly desirable for the NATO allies of the United States to explicitly call for the removal of all nuclear weapons from high-alert status to reduce the risk of nuclear war by accident or miscalculation. A NATO position in favor of global and verified de-alerting of all nuclear weapons, starting with the removal of U.S. and Russian weapons from high-alert status would be a large step towards fulfillment of the 2000 Review Conference Final Document goals as well as to increasing global nuclear safety.