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The Nuclear Non- Proliferation Treaty: Rebuilding Confidence

by Ernie Regehr

The sixth of a series of occasional papers on defence and disarmament issues in memory of Frank Blackaby

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**The Problem: Resolving the contradictions between
NATO doctrine and NPT demands**

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Preface

This is the sixth Blackaby Paper in the series commemorating the life and work of the late Frank Blackaby, sometime President of Abolition 2000 UK. It represents an extended version of the 'civil society perspective' lecture by Ernie Regehr given at the NGO Committee for Disarmament and World Council of Churches Seminar on the Nuclear Non-Proliferation Treaty held in Geneva Switzerland on April 11 2005.

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The Nuclear Non-Proliferation Treaty: Rebuilding Confidence

The Problem: Resolving the contradictions between NATO doctrine and NPT demands

That the Nuclear Non-Proliferation Treaty is under severe strain today is not in doubt. The Treaty's three basic provisions rightly make it a cornerstone of global security. First, it reinforces a clear global norm against the legitimacy of nuclear weapons. Second, it encourages the development of nuclear technology for non-military purposes while imposing specific legal prohibitions on the acquisition of nuclear weapons by non-nuclear weapon states (NNWS). Third, it places legal obligations on acknowledged nuclear weapon states (NWS) to dismantle and eliminate their nuclear arsenals. Yet, all three of these fundamental elements of the NPT are severely challenged:

- Additions to the nuclear “club” have been accepted with relative equanimity. The global norm against nuclear weapons is undermined by the way the “official” nuclear weapon states have now been joined by three essentially “accepted” nuclear states - India, Israel, and Pakistan. These are accepted as nuclear weapon states inasmuch as they have become publicly acknowledged as such without being subjected to any serious consequences from the international community. In fact, they can be said to have gained new respect, or at least special consideration, as a result of their nuclear status.
- The international community has to date failed to develop a consistent and compelling collective resolve regarding the ways and means to deal with NNWS parties to the Treaty that are found to be pursuing the acquisition of nuclear weapons or of technologies useful in the pursuit of a nuclear weapons capability in defiance of the letter and spirit of the Treaty. NPT member states N. Korea¹ and Iran continue to challenge the core prohibition of the Treaty and thus to raise doubts about the international community's enforcement capacity or resolve.
- Nuclear Weapon State adherents to the Treaty continue to avoid their disarmament obligations and continue to affirm the political and military legitimacy of nuclear weapons - for them. NWS parties to the Treaty continue to claim the right to retain nuclear arsenals and to pursue new nuclear weapons and delivery systems, and refuse to enter into meaningful negotiations on ongoing and irreversible nuclear disarmament.

The Treaty is in trouble and no state or group of states is absolved of the responsibility to help recover its vision and intent. All will have to make a contribution to the survival of the Treaty as an effective and key instrument through which the world seeks to keep at bay, and eventually eliminate, the unrivalled terror of nuclear weapons. One group of States with a particular responsibility is the group of Non-Nuclear Weapons States within NATO. These states occupy a special position and bear a unique responsibility to move the world towards the nuclear-weapon-free status that has been a formal and normative objective of the international community since at least 1968.

The NNWS members of NATO are special in that they embody public commitments that are uniquely and overtly contradictory. As NNWS signatories to the NPT they are, like all other NNWS signatories to the NPT, pledged to eliminate nuclear weapons and also to eschew the acquisition of nuclear weapons, yet, as members of the world's only current nuclear weapons alliance, they are also pledged to continue to rely indefinitely on nuclear weapons for their own security. Furthermore, some NATO states that adhere to the NPT as non-nuclear weapon states hold nuclear weapons on their territories, making the contradiction all the more stark.

It is true that these contradictions have in effect been tolerated by the NPT community throughout the full life of the Treaty, but it does not follow that they will continue to be tolerated indefinitely. “It is not acceptable to others,”

says Australia's former Ambassador for Disarmament, Richard Butler, "for the US, for example [and one could add NATO], to claim that its security is so important that it is justified in holding nuclear weapons but this is not the case for other states, such as India and now Iran." ²

Even John Deutch, who has held a number of senior US defence and security posts and who advocates a significantly reduced but ongoing nuclear arsenal for the United States, admits "a basic hypocrisy on the part of nuclear powers: they retain their own arsenals while denying others the same right." He goes on to say that Washington is pursuing "conflicting goals: maintaining a modern nuclear weapons posture, on the one hand, and curbing the spread of nuclear weapons, on the other."³ It is a double standard that is formally, but temporarily, accepted in the NPT.

From the beginning of the nuclear age states have responded to three "powerful but contradictory pressures," explains Prof. William Walker of the University of St. Andrews: "the first was to eliminate the weapon and thereby remove the threat of extinction...; the second...was for states to acquire the weapon so as to expand national power and prestige and balance or gain ascendancy over adversaries; [and] the third combined the first and second: to arm the Self whilst preventing the armament of Others."⁴

The NPT in a sense embodies the third impulse, but with a key qualifier: that the legitimacy of that double standard depends upon it being understood as a transition toward a single standard for all: "...the Treaty promised (the word is not too strong) that the asymmetry of capabilities would be nullified over time by the nuclear-weapon states' practice of arms control and disarmament."⁵

While the Treaty envisions the elimination of all nuclear arsenals, five nuclear weapon states are recognised as possessing nuclear weapons while working in good faith to implement their Article VI commitment to eliminate those arsenals:

Each of the Parties to the Treaty undertakes 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. ⁶

All other signatory states are prohibited from acquiring nuclear weapons at any time. It is a double standard that NNWS states were largely powerless to protest through decades of nuclear arming by nuclear weapon states in the deadliest arms race in human history - a period that certainly did not include good faith efforts toward disarmament, leading instead to the collective accumulation of more than 70,000 nuclear warheads. Since that peak in the early 1980s the numbers have been sharply reduced, but they remain at levels still readily capable of human annihilation, without any demonstrable commitment from key NWS to achieve their elimination and prohibition.

That double standard is not sustainable, morally or politically, and the pre-eminent current danger is that this double standard will be resolved in favor of nuclear weapons becoming more broadly acquired, rather than through their universal elimination. A number of non-nuclear weapon states could become nuclear weapon states relatively quickly; others have the means to pursue a nuclear capability over a longer period of time, even if it takes decades. The hope that those states with the technical and financial resources to acquire nuclear weapons, either quickly or over time, will continue to voluntarily forego a nuclear capability is bound to be dashed in a world in which nuclear weapons are seen to confer legitimacy and authority on those who possess them. It is a hope that certainly will not be realised as long as some of the world's most secure states, in North America and Western Europe, continue to insist that their security depends on the retention of nuclear weapons.

NATO's NNWS could make a major contribution to restoring international confidence in the Treaty by taking overt measures to acknowledge, mitigate, and ultimately end their contradictory status. There are other serious, and more immediate, threats to the NPT, but this Blackaby Paper starts from the premise that the NNWS members of NATO bear a special responsibility to come into full compliance with the spirit and letter of the Treaty, and that in so doing would render a singular service to the urgent, and far from guaranteed, mission to save the NPT from disintegration.

Overall Recommendations:

This call to action in support of the Nuclear Non-Proliferation Treaty is both urgent and focused. The urgency owes to the growing fragility of the global consensus on which the Treaty, the primary political and legal bulwark against a nuclearised global order, depends, while the focus owes to the very real contribution that NATO's non-nuclear weapon states could make to rebuilding the global consensus against nuclear weapons.

1. Revising NATO's nuclear doctrine:

- To set the appropriate framework for NATO policy and doctrine, the NATO nuclear strategy should state clearly what NATO states have agreed through the NPT, namely that global security, as well as the security of individual states and alliances like NATO, depends on the elimination of nuclear weapons;
- While calling on the NWS to redouble their nuclear disarmament efforts, NATO should make it clear that in the meantime the function of any existing nuclear arsenal must be limited and interim, and as such must be confined to deterring the use of nuclear weapons by any other state;
- In line with that limited role, NATO should implement a nuclear no-first-use policy;
- In addition, all NWS of NATO should significantly reduce the operational status of all their nuclear weapons, ensuring at a minimum that strategic nuclear weapons are taken off high alert status.

2. Nuclear Weapons on the territories of NNWS of NATO:

- NATO should immediately announce plans to remove all nuclear weapons from the territories of NNWS in NATO;
- NWS member states of NATO should announce that from here on the NPT's injunction against the transfer of nuclear weapons will be respected, and that all such weapons will remain in the territory and custody of the owner state;
- In addition, NATO should build on this termination of the current nuclear sharing practice by encouraging and supporting Russian reductions and dismantling of its non-strategic nuclear arsenal.

3. US Nuclear Weapons Policy:

- NATO as a collective should make it clear that the alliance will not in any way adopt the nuclear use policies and doctrines outlined in the US Nuclear Posture Review and National Security Strategy;
- The NATO state partners of the United States should then call upon it, as the predominant power of the alliance and the leading nuclear weapons power, to redefine its nuclear doctrine and policy in full accord with the negative security assurances that are required of all NWS and to agree to entrenching those assurances in an international legal instrument;
- NATO should also call on the United States to do what all other NATO states have already done, and that is to ratify the Comprehensive Test Ban Treaty, and to terminate all efforts toward reconstructing nuclear test facilities;
- And in line with all the above, NATO should encourage the United States to make the central undertaking of the 2000 NPT Review Conference, the declaration by NWS of their “unequivocal undertaking...to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties are committed under Article VI,” a central and defining element of US nuclear policy and posture.

4. A New NATO Policy Review:

- As a means toward acting on these disarmament imperatives, NATO should undertake another major nuclear policy review with a view to bringing its nuclear doctrine and nuclear sharing policies in line with the spirit and letter of the NPT;
- In the context of such a review NATO should undertake extensive consultations with civil society groups and experts;
- And in the further interests of transparency, all NATO states should undertake to prepare extensive reports on their nuclear disarmament efforts to all meetings of the NPT Review Conferences, including the Preparatory Committee sessions.

5. NATO-NAC cooperation:

- NNWS within NATO should work effectively with the New Agenda group of states to ensure that the upcoming and future NPT Review Conferences strengthen the global consensus in support of the Treaty and the disarmament objectives it embodies.

The Problems

In the following pages attention is drawn to NATO's responsibility to address these and other issues by reviewing three fundamental, and counter-productive, realities:

- The Alliance's continuing reliance on nuclear weapons;
- The presence of nuclear weapons in the territories of Alliance members which are NNWS signatories to the NPT;
- The nuclear weapons policies and doctrines of the Alliance leader.

While some members of the alliance have sought to address at least some of these realities, those efforts have to date not been effective and have so far failed to gain serious support amongst both the NWS and NNWS members of NATO.

NATO's Continuing Reliance on Nuclear Weapons

The Strategic Concept adopted by the Washington NATO Summit in 1999 remains the Alliance's official statement of purpose and outlines its approach to security, its force posture, and most importantly for the purposes of this report, its nuclear doctrine. The statement did not alter NATO's 1991 position on nuclear issues, reiterating the commitment to retain nuclear weapons indefinitely. It outlined a doctrine of deterrence dependent on nuclear weapons to 'preserve peace':

To protect peace and to prevent war or any kind of coercion, the 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.⁷

The declared threat to use nuclear weapons is essentially open-ended. It implies the possible use of nuclear weapons against any aggressors, including NNWS. The implication of this doctrine in the context of NATO expansion is significant. As Karel Koster, a European researcher points out, "the political implications

of the existing doctrine are far reaching. After all, the alliance is continually enlarging eastwards, essentially creating a Nuclear Weapons Free Zone-in-reverse: the number of countries committed to supporting and planning the use of nuclear weapons is actually increasing."⁸

The open-endedness of the nuclear threat suggests a willingness to be the first to use nuclear weapons in a conflict, and it appears to fly in the face of negative security assurances (see below).

The principle affirmed in the NPT, of course, is the opposite of the NATO doctrine that holds nuclear weapons to be essential for security. The NPT logic is that the elimination of nuclear weapons is essential to preserve peace, and Article VI of the Treaty makes such elimination a requirement. Furthermore, the International Court of Justice had earlier rendered a judgment to say that the NPT commitment to eliminate nuclear arsenals is a legal obligation. The court unanimously said: "There exists an obligation 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."⁹

In the 1995 NPT "principles and objectives"¹⁰ and in the 2000 "practical steps"¹¹ NATO states joined all other NPT signatories in declaring the elimination of nuclear weapons a priority objective.

In the meantime, in the context of pursuing nuclear disarmament, states agreed in 2000 that NWS have an obligation to pursue policies that result in "a diminishing role for nuclear weapons

in security policies to minimize the risk that these weapons ever be used and to facilitate the process of their total elimination.”¹²

Mohamed El Baradei, Director General of the International Atomic Energy Agency, has pointed out that to diminish the role of nuclear weapons there is a need to challenge deterrence doctrine itself, and especially extended deterrence that includes formally NNWS under the nuclear deterrence strategies of NWS:¹³

All NATO members, with the exception of France and Iceland, are members of the nuclear planning group and as such are directly engaged in nuclear use planning, a role not readily rationalized with their membership in the NPT as non-nuclear states.¹⁴

The argument that the NATO doctrine, describing nuclear weapons as essential to the security of NATO states, undermines non-proliferation is not based on the assumption NNWS pursue nuclear options simply because NATO declares nuclear weapons essential to its security. In some instances, of course, states do pursue nuclear weapons because others have them, but mostly the proliferation pressures emerge out of a myriad of conditions of insecurity and national interests and aspirations. But the more that the option of nuclearisation is

legitimized by states that are respected in the international community, like Canada and Germany, for example, the more the nuclear option can be actively entertained by others. If it is legitimate for Canada to claim that NATO nuclear weapons are essential to its security, for example, how much more can states in South Asia and the Middle East and elsewhere make the claim that they need nuclear weapons for their security? The overwhelming military advantage that NATO has over any potential adversary renders as absurd the NATO claim that its conventional forces do not represent a credible deterrent to others.¹⁵

Recommendation: At a minimum, the NATO Doctrine should be rewritten to reflect the NPT consensus that the security for all states requires that nuclear arsenals be eliminated, not retained indefinitely. NATO’s nuclear doctrine should at the very least describe the deployment of nuclear weapons as a temporary measure in the context of efforts towards balanced nuclear disarmament, that the only role of nuclear weapons is to deter the use of nuclear weapons by others,¹⁶ and that NATO therefore will adopt a policy of no-first-use of nuclear weapons.¹⁷ Finally, it should acknowledge that nuclear weapons represent an unacceptable risk to humanity, and that their early elimination is essential to human security.

The Presence of Nuclear Weapons in NATO Non-Nuclear Weapons States

Current estimates are that as many as 480 American non-strategic nuclear weapons remain stationed in six NATO states: ¹⁸ Belgium, Germany, Italy, the Netherlands, and Turkey, all non-nuclear weapon states, and the UK. Not only have these weapons been transferred there against the obvious intent of the NPT, under certain circumstances these weapons are also transferred to the control of the host state: “In time of war, the bombs would be transferred from US custodial units at these bases to NATO tactical aircraft flown by the pilots of the nations [in which the weapons are located]. In peacetime, these crews are trained to deliver the weapons, while almost all the NATO member states are involved in developing the plans to use them, including targeting.”¹⁹

NATO explains that “the U.S. nuclear weapons based in Europe are in the sole possession and under constant and complete custody and control of the United States. They are fitted with sophisticated Permissive Action Links (PAL) that guarantee absolute positive control by the U.S. and prevent unauthorised use.”²⁰ Of course, the NPT does not qualify its prohibition on the transfer of nuclear weapons. Such transfers are not declared permissible if control over them remains with the supplier country. Furthermore, such arrangements are confined to peacetime - in the event of war, the operational control reportedly passes to the host nation: ²¹ “Once the bomb is loaded aboard, once the correct Permissive Action Link code has been entered by the U.S. soldiers guarding the weapons, and once the aircraft begins its mission, control over the respective weapon(s) has been transferred.”²²

The 1999 Strategic Concept affirmed NATO's commitment to "maintain, at the minimum level consistent with the prevailing security environment, adequate sub-strategic forces based in Europe which will provide an essential link with strategic nuclear forces, reinforcing the transatlantic link".²³ It noted that these sub-strategic weapons "need to have the necessary characteristics and appropriate flexibility and survivability, to be perceived as a credible and effective element of the Allies' strategy in preventing war. They will be maintained at the minimum level sufficient to preserve peace and stability."²⁴

Article II of the NPT is unambiguous in its prohibition on NNWS acquisition of nuclear weapons under any circumstances:

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; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

Article I of the Treaty is equally unambiguous in its prohibitions on NWS nuclear weapons transfers:

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; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

As noted above, the standard defence of NATO's nuclear sharing is that this arrangement existed when the NPT was negotiated, and has never been challenged by the states parties.²⁵ Further, in the case of a war, after launch codes were released with Presidential approval, command and control of the weapons would be transferred, but at that point the NPT would be nullified by the crisis itself.²⁶ The text of the Treaty is, however, clear in its prohibition of the

transfer of nuclear weapons from a nuclear to a non-nuclear weapon state - at any time.

It can be expected that the international community outside of NATO will increasingly view NATO's nuclear doctrine and nuclear sharing arrangements as an impediment to the fulfillment of NPT obligations. As the following NGO statement to the 1998 PrepCom already argued, the NPT Review process is the appropriate venue within which to address NATO's nuclear policies and preparations:

*We therefore believe that the NPT Review Process should openly discuss whether NATO nuclear sharing violates the spirit and intent of the NPT. NATO nuclear sharing is an appropriate topic for this year's PrepCom because the mandate includes discussions on such issues as negative security assurances. In addition, NATO nuclear sharing is an obstacle for the fulfillment of Article VI commitments.*²⁷

The British American Security Information Council (BASIC) says "there is an emerging consensus (outside NATO) that NATO's nuclear sharing arrangements are obvious acts of non-compliance under Articles I and II of the NPT." BASIC calls on the US and NATO to explain how the presence of tactical nuclear weapons in European NNWS party to the NPT "for wartime use on board non-nuclear allies' dual-capable aircraft" complies with their obligation not to transfer control of nuclear weapons, and not to receive such weapons.²⁸

Recommendation: In a sense the recommendation is simple - implement Articles I and II of the Treaty by returning all nuclear weapons to the territory of their owner country. But that is only the start. NATO has an opportunity to remove entirely the pretence on which Russia's continued retention of large stocks of non-strategic nuclear weapons is based. In a call for reciprocity for the ending of NATO's nuclear sharing arrangements, Europe could effectively pressure Russia to immediately and radically reduce, and ultimately eliminate, its non-strategic arsenal. A pledge not to deploy nuclear weapons outside the territories of the states that own them would also provide further assurances to Russia that nuclear weapons will not one day wind up in states drawn into NATO through its eastward expansion.

The Nuclear Weapons Policies and Doctrines of the NATO Leader

As the leading power within NATO and the dominant nuclear power, the US approach to its Article VI obligations will have a major bearing on the outcome of the 2005 NPT Review Conference and on the fate of the Treaty itself. The 2002 Nuclear Policy Review and the National Security Strategy documents demonstrate a clear commitment to modernizing the US nuclear arsenal and to new nuclear use doctrines, rather than to making progress toward the Article VI imperative to disarm.

The Nuclear Posture Review (NPR) makes it clear that the US nuclear arsenal is to be retained indefinitely and that a program of “force modernisation” is planned:²⁹

“The Chairman of the Joint Chiefs of Staff has initiated a Strategic Deterrent Joint Warfighting Capability Assessment to characterize the requirements for nuclear weapon systems in the 2020 timeframe. The assessment is to be complete in early FY03.” ... DoD, in coordination with the NNSA, will evaluate nuclear weapon options to increase weapon system effectiveness and flexibility and to limit collateral damage. Capability improvements are likely to be needed to correct the limitations of the existing nuclear forces.” (pp. 48-49)

The NPR also assumes that nuclear force is to be available for use in a broad range of contingencies, including use against non-nuclear signatories to the NPT. The document sets out three kinds of contingencies in response to which the US must, it says, have nuclear strike capabilities categorised as “immediate, potential or unexpected.”

“Immediate contingencies involve well-recognized dangers... (such as) an Iraqi attack on Israel, a North Korean attack on South Korea, or a military confrontation over Taiwan.”

“Potential contingencies are plausible, but not immediate dangers (such as) emergence of a new, hostile military coalition against the US or its allies in which one or more members possesses WMD”

“Unexpected contingencies are.. unpredicted security challenges... like the Cuban Missile Crisis.. (and such as). a sudden regime change by which an existing nuclear arsenal comes into the

hands of a new, hostile group...”

The document goes on to list countries against which continuing nuclear strike capabilities are required including North Korea, Iraq, Iran, Syria, and Libya. The strategies assume the right of first use of nuclear weapons, including pre-emptive use.

In the post- 9/11 climate, the National Security Strategy focused on the threat of rogue states, perceived not to be amenable to deterrence, who might acquire weapons of mass destruction. This document first outlined the concept of pre-emption, which stated that to forestall or prevent hostile acts by its adversaries,” the United States will, if necessary, act preemptively”. (p. 15)³⁰

While pre-emption itself is not new, the Bush Administration has switched the context from that of imminent threats to potential threats.³¹ The document is also striking in the breadth of contingencies for which it sees a nuclear response - not only against the threat of nuclear weapons against the United States, but chemical and biological threats, extending to the emergence of “surprising military developments.” The national security document then calls for existing nuclear strike capabilities to be augmented. In particular the NPR describes the need for new capabilities to attack and destroy hard and deeply buried targets (HDBT), claiming that more than 70 countries use such facilities for military purposes. The NPR claims that the US currently has a very limited ground penetration capability even with its nuclear earth penetrating weapon, the B61 Mod 11 gravity bomb, and that a more effective penetrator is needed.

All of these changes to US nuclear doctrine have serious implications for NATO. Participants in a May 2003 Norway conference on NATO and the NPT pointed out the close historic coordination between US and NATO doctrine and military planning. Changes to US nuclear posture thus foreshadows changes in NATO’s posture. Yet overt NATO buy-in to “such weapons ... [would] run contrary to the core nonproliferation goals of the alliance by providing.. incentives to others to develop ...nuclear weapons and by condoning nuclear weapons use.”³²

Several NATO countries have distinguished themselves as consistent advocates of disarmament and denuclearization of security relations, which gives hope that they would not acquiesce to such changes in NATO doctrine and policy and withhold the consensus needed. But the negative consequences of any such move warrant drawing public attention to the urgent need for NATO to resist new nuclear-use doctrines, to reduce the political roles of nuclear weapons, and to acknowledge formally that there are no military roles for such weapons.

Negative security assurances, commitments by NWS not to use or threaten to use nuclear weapons against non-nuclear weapon states, were prominent in the decision to extend the NPT indefinitely taken at the 1995 Review Conference. The Non-Aligned Movement called for legally binding, universal negative security assurances as a condition of extending the treaty indefinitely, and UN Security Council Resolution 984 referred to independently given negative security assurances by each of the five NWS. The US statement says:

The United States reaffirms that it will not use nuclear weapons against non-nuclear-weapon state-parties to the Treaty on the Nonproliferation of Nuclear Weapons, 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.

The nuclear weapon states reaffirmed the legitimacy of these negative security assurances in their statements to both the 2002 and 2003 PrepComs. In 2003 Canada told NPT PrepCom delegates that it is not “NATO policy that nuclear weapons may be used against non-nuclear weapon States parties to the NPT, except as provided in the language of the Negative Security Assurances affirmed in 1995 by the three NATO nuclear-weapon States.”³³

Recommendation: NATO should state formally what Canada stated on its behalf in 2003 - namely, that NATO policy is in accord with formal 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.”³⁴

The lack of American political consensus with regard to these developments and strategic objectives is reflected in the negotiations over funding new nuclear weapons programs. Priorities identified in both the Nuclear Posture Review and the National Security Strategy were reflected in the 2004 budget.

The fiscal year 2004 Defense Authorization Bill included \$15 million for a feasibility analysis of a robust nuclear earth penetrator as well as \$6 million for research on existing nuclear weapons. The Spratt-Furse ban on development of low-yield (less than 5 kilotons) nuclear weapons was repealed. And \$25 million was pledged for nuclear infrastructure updates, including the Nevada test site, with the intention of reducing the time required to renew nuclear testing.

In the 2005 Budget funding for these programs was however largely eliminated, with Congress cutting or scaling back most of the President’s proposals.³⁵

Recommendation: Disarmament analysts in Washington say it will be a struggle to prevent the restoration of funding to these programs. Those efforts need support from the NNWS allies of the United States, which should together call for a global ban on funding new nuclear weapons developments and testing.

The Comprehensive Test Ban Treaty has yet to enter into force. It requires the signature of and ratification by 44 nuclear capable countries; to date 32 have completed the process. The US is the only NATO state that has not ratified, and the Bush Administration has rejected the Treaty.

The 13 steps adopted in 2000 with US support require all states parties to support the early entry into force of the CTBT, and in the interim, to maintain a moratorium on nuclear weapons explosions. These agreements are outlined in Steps 1 and 2:

Step 1. The importance and urgency of signatures and ratifications, without delay and without conditions and in accordance with constitutional processes, to achieve the early entry into force of the Comprehensive Nuclear-Test-Ban Treaty.

Step 2. A moratorium on nuclear-weapon-test explosions or any other nuclear explosions pending entry into force of that Treaty.

The Nuclear Posture Review subsequently said the following:

“The United States.... supports the continued observance of the testing moratorium. While the US is making every effort to maintain the stockpile without.... testing, this may not be possible for the indefinite future... Each year the DOD and DOE will reassess the need to resume nuclear testing and will make recommendations to the President... to assure the safety and reliability of (the)... nuclear weapons.” (p. 55)

All NATO members have a deep interest in ensuring continuation of the testing moratorium and encouraging their ally also to ratify the Treaty and permanently to disavow nuclear testing. NATO states committed to the CTBT have a special obligation not to adhere to any nuclear doctrine that could be construed as generating a need for further nuclear weapons development and thus testing.

Recommendation: That the NATO NNWS allies of the United States apply substantial pressure on the United States by reiterating their belief that obligations under the NPT require CTBT ratification, implying that a failure to ratify would generate a significant rift within NATO.³⁶

NATO's Efforts to Deal with These Contradictions

1. The Paragraph 32 Process:

Paragraph 32 of the 1999 Washington NATO Summit Communiqué provided for the review of alliance nuclear policy. The December 2000 Report on Options for Confidence and Security Building Measures (CSBMs), Verification, Non-Proliferation, Arms Control and Disarmament was the result.³⁷ It repeated the 1999 Strategic Concept (para 72), along with the acknowledgment that with the end of the Cold War, threats to the Alliance were reduced both in numbers and readiness (para 86). At the same time, the report reaffirmed the entire Final Document of the 2000 NPT Review Conference, including the 13 Steps for the systematic and progressive implementation of Article VI (para 106).

Some caution that to open the NATO nuclear policy and doctrine to review in the present political climate could be counter-productive inasmuch as the US Administration would either resist change or press for an even more problematic nuclear strategy for the Alliance. But since NATO functions by consensus, it would be possible to withhold agreement on any retrograde steps. The case for reopening the question is the urgent need to focus attention on the need for change and on the way in which current policy adds to proliferation pressures.

Recommendation: NATO should immediately signal that a new review of NATO's purpose

and especially the role of nuclear weapons in pursuit of that purpose is to be undertaken.

2. NATO and Transparency:

The December 2000 report also made a commitment to greater transparency and consultation with civil society related to the development of NATO nuclear policy:

NATO is committed to meaningful public outreach to interested individuals and groups, including discussion of the adaptations which the Alliance's force posture has undergone over the last decade in response to the changed security environment. NATO is equally committed to discussing the Alliance's policy of support for nuclear arms control and disarmament. In this regard, the Alliance will continue to broaden its engagement with interested non-governmental organizations, academic institutions and the general public and will contribute actively to discussion and debate regarding nuclear weapons and nuclear arms control and disarmament issues. (Para 96)

While the commitment to consult is welcome, NATO's self-understanding of the objective of consultation still needs some work:

“The general aim of transparency is to contribute to confidence and security building and non-proliferation and to foster public and political support by explaining the rationale of NATO's nuclear policy and posture...” (Para 98)

Neither confidence nor meaningful engagement with civil society groups are accomplished by NATO “explanations” of nuclear policies and posture for the purpose of “fostering public and political support” for NATO’s existing policies and practices. Engagement requires ongoing consultation and the recognition that the engagement and advice of civil society can lead to fundamental changes to existing practices - including change toward more effective pursuit of collective disarmament goals.

The general acknowledgement of the importance of transparency, for both nuclear and non-nuclear weapon states, is reinforced by the agreement of NATO states to transparency measures agreed to in the 13 disarmament steps of the NPT 2000 Review Conference:

Step 9.2 Increased transparency by the nuclear-weapon States with regard to the nuclear weapons capabilities and the implementation of agreements pursuant to Article VI and as a voluntary confidence-building measure to support further progress on nuclear disarmament.

Step 12. Regular reports, within the framework of the strengthened review process for the Non-Proliferation Treaty, by all states parties on the implementation of article VI and paragraph 4 (c) of the 1995 Decision on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”, and recalling the advisory opinion of the International Court of Justice of 8 July 1996.

The nuclear weapon state members of NATO have been reluctant to submit formal reports, preferring to provide information in a variety of interventions, though in most cases gradually providing increased information. Their refusal to accept a special obligation to submit formal reports implicitly rejects the principle of their accountability to other states party to the Treaty.

Recommendation: NATO should encourage all its members to submit regular formal reports to the NPT Review Conferences and each of their Preparatory Committee sessions, in accordance with commitments made at the 2000 Review Conference. NATO should also put in place an ongoing process of extensive consultation with civil society, especially in the recommended review of NATO nuclear doctrine.

3. The New Agenda Coalition-NATO Bridge-Building Strategy:³⁸

The non-proliferation regime currently faces two prominent challenges:

- US and NATO nuclear policies are used to justify NNWS pursuit of nuclear capability. That is not to say that states are driven to nuclearize simply by virtue of US policy, but to the extent that NATO and Washington continue to legitimize nuclear weapons and to demonstrate their political utility, nuclear options are “legitimised” for those NNWS states also seeking options.
- The regime is threatened by what happens, or does not happen, to the threshold regimes that cross the line. If states that have decided to forego nuclear weapons but that could mount a credible effort to acquire them (by pursuing arguably lawful enrichment and reprocessing technologies, as long as they are open for inspection, for example) begin to fear that the non-proliferation regime is eroding, they may well be tempted to “hedge their bets” and prepare nuclear options just in case the regime falls apart. “Fearing future defections from the regime, even countries that currently have no nuclear ambitions may feel compelled to rethink their nuclear options so as to avoid being the last to join a rapidly enlarging nuclear club.”³⁹ That is why it is especially important that the non-proliferation regime must not be allowed to be seen to be eroding further - making it critically important not only that Iran and North Korea be prevented from going nuclear, but that India, Israel, and Pakistan finally face full international pressure to conform to the global norm against the acquisition of nuclear weapons.

It is clear that the NATO-NPT contradiction will not be indefinitely accepted. Karel Koster points out that “this glaring policy contradiction has not escaped the attention of the International Atomic Energy Agency (IAEA) Secretary General El-Baradei, who at a meeting organised by the Council on Foreign Relations on 14 May (2004) in New York stated that:”

“...We need to do better in terms of protecting ourselves, and we cannot just continue to say, well, we have 25 countries, say, the NATO

*countries, who are relying on the nuclear umbrella, and everyone else should sit quietly in the cold, you know. That, as I said, in the long run, is not sustainable ...”*⁴⁰

The United States has been calling for strict NPT adherence, with particular attention to potential proliferators. While that is indeed necessary, the US cannot expect the Treaty to thrive indefinitely under a system in which some are called to strict account while NATO continues to claim that exemption from adherence to the Treaty’s actual requirements. BASIC put it this way in 2003:⁴¹

US Assistant Secretary of State John S. Wolf said... there must be serious consequences for those who violate their NPT commitments. The United States later called for greater focus on compliance with Articles I and II. The US submission stated that "the NPT must be more than an international norm. It must be enforced. We must insist on strict observance"... (and) also called for attention to "low level cheating not involving nuclear material." These comments were specifically targeted 'overseas' but they surely apply closer to home as well.

The New Agenda coalition’s 2004 UNGA resolution on “Accelerating the implementation of nuclear disarmament commitments” (A/RES/59/75) sets out several disarmament priorities that have relevance for NATO and its nuclear weapons policies. The resolution calls for:

- Early entry into force of the CTBT;
- Reductions in non-strategic nuclear arsenals;
- NWS not to develop new types of nuclear weapons;
- Negotiations toward a verifiable ban on the production of fissile material for nuclear weapons;
- A subsidiary body to the Conference on Disarmament to deal with nuclear disarmament;
- Adherence to the principles of irreversibility, transparency, and verification in nuclear disarmament.

Several NATO States joined the NAC in supporting the resolution (Belgium, Canada, Germany, Luxembourg, Lithuania, Netherlands, Norway, and Turkey). NATO’s three NWS voted against the resolution, as did Russia, while China voted in support.

Recommendation: The NATO states that supported the NAC resolution in 2004 should work to bring other NATO NNWS into full support of the disarmament agenda outlined in the NAC resolution and to ensure that the non-proliferation commitments made in 1995 and 2000 are reaffirmed in 2005. These same states also have a responsibility to challenge NATO collectively to take measures to modify its own nuclear policies as a demonstration of a serious intention, not only to renew commitments, but also to implement them.

Notes

- 1 While North Korea has declared its unilateral withdrawal from the Treaty, it is not thereby relieved of its obligations under the Treaty. Having acquired nuclear materials and technology as an exercise of its right to these under the Treaty, it cannot now expect to be permitted to exploit that technology and materials for weapons purposes simply by withdrawing from the Treaty that prohibits its actions.
- 2 Richard Butler, "Heavily Armed Duo in No Position to Lay Down Law on Proliferation," www.commondreams.org/views05/0307-28.htm.
- 3 John Deutch, "A Nuclear Posture for Today," *Foreign Affairs* (January/February 2005, Vol. 84, No. 1), pp. 51-52.
- 4 William Walker, *Weapons of Mass Destruction and International Order*, Adelphi Paper 370, International Institute for Strategic Studies (Oxford University Press: New York, 2004), p. 23.
- 5 William Walker, p. 13.
- 6 Article VI of the Treaty. The Text of the Treaty is available at Reaching Critical Will (<http://www.reachingcriticalwill.org/legal/npt/npttext.html>).
- 7 The Alliance's Strategic Concept, Approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C. on 23rd and 24th April 1999, para 46 (<http://www.nato.int/docu/pr/1999/p99-065e.htm>).
- 8 Karel Koster, "NATO Nuclear Doctrine and the NPT," BASIC Briefings, June 29, 2004 (<http://www.basicint.org/pubs/20040629NATO-nuclear-Koster.htm>).
- 9 The July 8, 1996 Opinion of the International Court of Justice on the Legality of Nuclear Weapons, Section (2)F, in response to the question, "Is the threat or use of nuclear weapons in any circumstance permitted under international law?," submitted via UN General Assembly Resolution 49/75K of December 15, 1994.
- 10 (Para 4.c) "The determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of elimination those weapons, and by all States of general and complete disarmament under strict and effective international control."
- 11 (Step 6) "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."
- 12 Step 9: "Steps ... leading to nuclear disarmament ... based on the principle of undiminished security for all ...; efforts by NWS to reduce nuclear arsenals unilaterally ...; increased transparency by NWS ...; further reduction of non-strategic nuclear weapons ... Concrete measures to reduce the operational status of nuclear weapons ...; A diminishing role for nuclear weapons in security policies ... (and) The engagement .. of all NWS in the process leading to total elimination of nuclear weapons."
- 13 From a speech at the Non-Proliferation Conference of the Carnegie Endowment for International Peace, November 2002, quoted in "Is NATO coming under pressure to amend its nuclear policy?" BASIC Notes, June 2, 2003 (<http://www.basicint.org/pubs/Notes/2003NATOnukes.htm>)
- 14 Arjun Makhijani and Nicole Deller, "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," Institute for Energy and Environmental Research (<http://www.ieer.org>).
- 15 John Deutch makes the point about the US: "...with its overwhelming conventional military advantage, the United States does not need nuclear weapons for either war fighting or for deterring conventional war." P. 50.
- 16 Statement in Cluster 1 by Canada at the 2003 Preparatory Committee of the 2005 Review Conference.
- 17 Jack Mendelsohn, "NATO's Nuclear Weapons: The Rational for 'No First Use'," *Arms Control Today*, July/August 1999.
- 18 "More than a decade after the dissolution of the Soviet Union, only the United States continues to deploy land-based nuclear weapons outside its borders. ...After reviewing both new and old evidence we have concluded that there are more than three times as many bombs in Europe as was previously thought. We estimate that approximately 480 bombs are housed at eight bases in six European nations. Three types of bombs are deployed: B61-3, B61-4, and B61-10. ...In the mid-1990s rumors circulated about further cuts in the number of U.S. bombs in Europe, but a re-examination of available evidence indicates that additional cuts were not made. [Robert S. Norris and Hans M. Kristensen, NRDC Nuclear Notebook, Bulletin of the Atomic Scientists (November/December, 2004), pp. 76-77.]
- 19 Karel Koster, "NATO Nuclear Doctrine and the NPT," BASIC Briefings, June 29, 2004 (<http://www.basicint.org/pubs/20040629NATO-nuclear-Koster.htm>).
- 20 "NATO's Positions Regarding Nuclear Non-Proliferation, Arms Control and Disarmament and Related Issues," a June 3, 2004 NATO Issues brief (<http://www.nato.int/issues/nuclear/position.htm>).
- 21 Koster, "NATO Nuclear Doctrine and the NPT."

- 22 Otfried Nassauer, "NATO Nuclear Sharing: Is it legal?", *Science for Democratic Action*, Vol. 9, No. 3, May 2001. Online at: http://www.ieer.org/sdfiles/vol_9/9-3/nato.html
- 23 The Alliance's Strategic Concept, Approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C. on 23rd and 24th April 1999, para 64 (<http://www.nato.int/docu/pr/1999/p99-065e.htm>).
- 24 The Alliance's Strategic Concept, Approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C. on 23rd and 24th April 1999, para 63 (<http://www.nato.int/docu/pr/1999/p99-065e.htm>).
- 25 "The Alliance's arrangements for basing U.S. nuclear gravity bombs in Europe are in compliance with the NPT. When the Treaty was negotiated, these arrangements were already in place. Their nature was made clear to key delegations and subsequently made public. They were not challenged." "NATO's Positions Regarding Nuclear Non-Proliferation, Arms Control and Disarmament and Related Issues," a June 3, 2004 NATO Issues brief (<http://www.nato.int/issues/nuclear/position.htm>).
- 26 "The US National Command Authority (NCA) retains the launch codes for use of US weapons in Europe and elsewhere. Thus the US NCA has 'positive control' over all these weapons: they cannot be armed without a US presidential decision." Questions of Command and Control: NATO Nuclear Sharing and the NPT, Chapter 2.1, PENN Research Report 2000.1, March 2000.
- 27 "NATO Nuclear Weapons 'Transfers,'" NGO statement to 1998 NPT PrepCom, coordinated by Oliver Meier of the Berlin Information-center for Transatlantic Security (BITS), Nuclearfiles.org: a project of the Nuclear Age Peace Foundation (http://www.nuclearfiles.org/hinonproliferationtreaty/98npt_ngo3.html).
- 28 "Is NATO coming under pressure to amend its nuclear policy?" BASIC Notes, June 2, 2003 (<http://www.basicint.org/pubs/Notes/2003NATOnukes.htm>).
- 29 All references to the Nuclear Posture Review are taken from excerpts of the classified version of the Nuclear Posture Review, available at GlobalSecurity.Org, Nuclear Posture Review Report, January 8, 2002 (<http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>). A US Department of Defense Special Briefing on the Nuclear Posture Review, January 9, 2002, is available on the same site (<http://www.globalsecurity.org/wmd/library/news/usa/2002/us-020109-dod01.htm>).
- 30 References to The National Security Strategy of the United States of America, September 2002, are taken from the PDF version on the White House web site (<http://www.whitehouse.gov/nsc/nss.pdf>).
- 31 David S. McDonough, "The 'new triad' of the Bush administration," *Internal Journal*, Vol. LIX, No. 3, Summer 2004 (Canadian Institute of International Affairs), pp. 613-634.
- 32 Alistair Millar and Morten Bremer Maerli (eds.), "Conference Proceedings: NATO Nuclear Non-Proliferation Policies in a Changing Threat Environment, sponsored by the Fourth Freedom Forum, the Norwegian Atlantic Committee, the Norwegian Institute of International Affairs (Oslo, May 12, 2003), p. 24.
- 33 Statement in Cluster I by Canada at the 2003 Preparatory Committee of the 2005 Review Conference.
- 34 Arjun Makhijani and Nicole Deller, "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," Institute for Energy and Environmental Research (<http://www.ieer.org>).
- 35 Wade Boese, "Congress Axes Funding for New Nukes," *Arms Control Today*, December 2002, p. 34.
- 36 Arjun Makhijani and Nicole Deller, "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," Institute for Energy and Environmental Research (<http://www.ieer.org>).
- 37 Available in PDF on the NATO web site (<http://www.nato.int/docu/pr/2000/p00-121e/home.htm>).
- 38 This bridge-building strategy is the current focus of the international NGO, the Middle Powers Initiative, and was the subject of a February 21, 2005 roundtable in Ottawa, "Bridging the Divide: Addressing Key Challenges to the NPT," sponsored by the Canadian Pugwash Group, Physicians for Global Survival, Project Ploughshares, Lawyers for Social Responsibility, and the Middle Powers Initiative.
- 39 Jon B. Wolfsthal, "The Next Nuclear Wave," *Foreign Affairs* (January/February 2005, <http://www.foreignaffairs.org/20050101faessay84109/selig-s-harrison/did-north-korea-cheat.html?mode=print>).
- 40 Karel Koster, "NATO Nuclear Doctrine and the NPT," BASIC Briefings, June 29, 2004 (<http://www.basicint.org/pubs/20040629NATO-nuclear-Koster.htm>).
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