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Dangers and Opportunities: Nuclear Weapons and the NPT Review

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On April 6, the Obama administration released its Nuclear Posture Review. It's required reading for anyone you know – even yourself! - who thinks nuclear weapons went away after the disintegration of the Soviet Union. There are some positive elements in the review. It initiates a research program on how to achieve a world free of nuclear weapons. And my favorite line is this: "It is in the U.S. interest and that of all other nations that the nearly 65-year record of nuclear non-use be extended forever." Amen to that! But what I want to emphasize now is the essential continuity with past policy.

- Longstanding elements of US doctrine remain in place: to defend its vital interests, the United States may use nuclear weapons, preemptively or responsively, in relation to both nuclear and non-nuclear capabilities and attacks by other states possessing nuclear weapons, or states deemed not to be in compliance with the Nuclear Non-Proliferation Treaty. First use is not ruled out.
- No substantial changes are made in the US nuclear force structure of heavy bombers, land-based missiles, and ballistic missile submarines, or in their alert states. The Nuclear Posture Review says that "nearly all" land-based missiles are "on alert," and a "significant number" of ballistic missile submarines are "at sea at any given time." It is estimated that the US has about 1000 warheads ready for launch within minutes at all times.
- The arsenal of operationally deployed warheads and bombs the United States will field under the New START agreement just signed could be several hundred in excess of 1550 due to a counting rule. It would enable a full-scale, Cold-War style preemptive or responsive attack upon Russian nuclear forces, airfields, command and control centers, military-industrial targets, etc.

Earlier this year, Russia released a statement on its doctrine. The statement says: "Russia reserves the right to use nuclear weapons in response to a use of nuclear or other weapons of mass destruction against her and (or) her allies, and in a case of an aggression against her with conventional weapons that would put in danger the very existence of the state." Again, first use is not ruled

out. Russia too maintains and is modernizing its triad of nuclear forces enabling an all-out attack on the United States within minutes of an order to do so.

Some may say: doctrines and capabilities don't matter, the US and Russia won't get into a war or a nuclear conflict. Perhaps we have to worry about India and Pakistan, developments in the Middle East, or non-state terrorists getting their hands on the bomb. But not the US and Russia, or the US and China, or Russia and China, or China and India. I devoutly hope this is true. But I am not convinced by this line of reasoning.

Russia seemed to regard a military confrontation with the United States as a real possibility in relation to its conflict with Georgia in August 2008. And let me quote from Sergei Karaganov of the Russian Academy of Sciences. He wrote this in an article earlier this year: "We must be unequivocal about this very unpleasant truth: the possibility of further NATO expansion to Ukraine, which Russia views as a vital threat to its security, has the potential to revive the long-forgotten specter of a large-scale war in Europe, which could escalate unpredictably."

As my friend and colleague, Andy Lichtenman of Western States Legal Foundation, has been saying for years: We disregard the possibility of conflict among the world's most powerful, nuclear-armed states in coming years and decades at our peril. This is especially so in a period of economic disruption and intensified competition for oil, gas and other resources.

Let's look at doctrines from another angle. The UN Secretary-General has wisely remarked that nuclear deterrence has proved to be "contagious." And Randy Rydell of the UN Office for Disarmament Affairs pointed out a corollary: when the United States sets out a doctrine, sometimes the very same words show up in the doctrines of new nuclear powers.

Contagion is the right word. Nuclear weapons are techno-pathogens, and they must be eradicated. To denuclearize the world, we're first going to need to denuclearize discourse. Fortunately this is already happening. Instead of talk about use of nuclear weapons, there's more talk about disarmament.

And a talkfest is coming up! – The five-year Nuclear Non-Proliferation Treaty Review Conference, starting Monday at the UN here in New York.

THE NUCLEAR NON-PROLIFERATION TREATY

Before explaining what is at stake in the Review Conference, let me give some background on the NPT.

Mostly written by the United States and Russia in the 1960s, the NPT was a treaty aimed at stopping the further spread of nuclear weapons. It contains a very

specific, clearly mandatory obligation not to acquire nuclear weapons, monitored and verified by the International Atomic Energy Agency. To induce acceptance of the treaty, it also included a vague obligation to "pursue negotiations in good faith" on nuclear disarmament. That's the famous Article VI. But there is no monitoring by an international agency, no timelines.

After the Soviet Union disintegrated, major efforts were made to rebalance the treaty. In 1995 in connection with indefinite extension of the NPT, and again in 2000, NPT conferences agreed to a road map for the achievement of a nuclear weapon free world: verified, irreversible reductions, test ban treaty, treaty banning production of fissile materials for nuclear weapons, reducing the role of nuclear weapons in security policies, etc.

And in 1996, the International Court of Justice unanimously interpreted Article VI to require states to "bring to a conclusion negotiations on nuclear disarmament in all its aspects under strict and effective international control." The Court also concluded that threat or use of nuclear weapons is generally contrary to international law, in particular those rules protecting civilians, the environment, and neutral nations from indiscriminate and uncontrollable effects of warfare.

But the hopes of the 1990s have yet to be realized. The nuclear weapons states, especially the United States, for the most part ignored the commitments made in 1995 and 2000. India and Pakistan, states outside the NPT, conducted test explosions of nuclear weapons in 1998, and North Korea withdrew from the treaty and tested a device in 2006.

So we are faced with a treaty with the following problems:

There are very restricted means for ensuring compliance. The real action regarding non-proliferation takes place in the IAEA and its Board of Governors and in the Security Council. As to disarmament, there is nothing in place at all except for an important forum – the review conferences - for securing commitments and for very general discussion of implementation.

Beyond that, the non-proliferation regime has a fundamental problem of double, indeed triple standards. The NPT itself is a two-tier system, with nuclear haves and have-nots. This in itself is contrary to the essence of law, that the same rules apply to all.

Then there are the states with nuclear arsenals outside the NPT – India, Pakistan, and Israel, and recently the DPRK. This puts a lot of strain on some states inside the NPT required not to obtain nuclear weapons. The Nuclear Suppliers Group exemption for India pushed by the United States exacerbates the uneven application of standards. It permits nuclear commerce with a state that has not

even formally accepted the disarmament obligation and commitments undertaken by the nuclear weapon states within the NPT. Meanwhile, a non-nuclear weapon state in the NPT, Iran, is scrutinized and penalized due to a program suspected of aiming at making it capable of producing nuclear weapons.

There is only one solution to the problem of triple standards: the creation of a global system with one verified rule applying to all states, non-possession of nuclear weapons.

A precedent is provided by the Chemical Weapons Convention. An agency verifies compliance with the rule of non-possession. An executive council and a conference of states parties are empowered in the first instance to deal with suspected non-compliance. My organization, with others, has developed a model Nuclear Weapons Convention along the same lines, which the Secretary-General has recommended as a starting point for negotiations on global elimination of nuclear weapons.

THE REVIEW CONFERENCE

With that background, what's at issue in the Review Conference that starts on Monday and goes on for four weeks? Governments will engage in intense and difficult negotiations in three main contested areas.

The first contested area will concern an action plan for nuclear disarmament. Given the US change of course under Obama, it probably won't be that hard to affirm updated versions of past commitments, bringing the Comprehensive Nuclear-Test-Ban Treaty into force and so on.

More complicated will be negotiations concerning a commitment to bringing states with nuclear arsenals in addition to the United States and Russia into the process of reductions. The Obama administration has endorsed this approach in principle, but offered no concrete near-term mechanisms.

The Non-Aligned Movement will put forward a plan for global elimination of nuclear weapons by 2025, with a convention providing for verification, conversion of weapons facilities to peaceful uses, etc. entered into force by 2020. The nuclear weapon states are not likely to accept the plan. But it may provide a boost to an approach favored by many in civil society, that the Review Conference launch a preparatory process for negotiations on a convention or framework of instruments.

The Non-Aligned Movement deserves our support, and has it in the form of over 10 million signatures on petitions calling for commencement of negotiations on global nuclear abolition. Those of us who will be attending the Review

Conference can show our support in person; we can organize at the 8 am Abolition Caucus and Coffee meetings in the UN cafeteria.

The second contested area at the Review Conference will concern strengthening of measures on preventing the spread of nuclear weapons, including: enhancing the IAEA's inspection powers through the "Additional Protocol", multilateral controls on the production and supply of fuel for nuclear reactors, adding restrictions on withdrawal. Many non-nuclear weapon states resist such measures, contending that they have already "paid" for disarmament by joining and complying with the NPT.

The third contested area will concern advancing the achievement of a zone free of nuclear, chemical, and biological weapons in the Middle East, thus denuclearizing Israel. This was promised by a resolution adopted by the 1995 NPT conference. It is vital to Arab states – and it could also be helpful in resolving the dispute over Iran's nuclear program. Here the signals are promising. It appears that agreement may be reached on convening an international conference in the next one or two years on the subject.

AFTER THE REVIEW CONFERENCE

There's quite a good chance that the Review Conference will yield some positive commitments. But if the experience of the past 15 years has taught us anything, it's that commitments are not enough; they have to be implemented. And beyond that, it's become clear that the NPT itself has become outmoded. A new global regime is needed that builds on the NPT but goes beyond it to provide for the universal elimination of nuclear weapons.

Regardless of international agreements, action is needed in individual countries, especially those that have nuclear weapons or are in nuclear alliances. It is urgent to reduce spending on nuclear forces and production facilities, reduce numbers, reduce reliance. Practices can lead to agreements.

And there's a lot to be done in the United States on these matters, as our conference this weekend will examine. Just for example, the Obama administration's FY2011 budget request on February includes \$7.282 billion for the nuclear weapons complex, about a 14% increase over FY2010. Linton Brooks commented that as head of the National Nuclear Security Administration under George W. Bush, he "would have killed for the FY11 budget." We have to ensure that ratification of New START and the Comprehensive Nuclear-Test-Ban Treaty do not paradoxically have anti-disarmament effects by further entrenching and modernizing the US weapons complex and US nuclear forces.

If a process on global disarmament is not set in motion by the Review Conference, we don't have to wait five years for the next Review Conference.

Negotiations, or preparations for negotiations, on abolition can be launched in the General Assembly, or by states acting jointly outside the UN or NPT.

WHY ABOLISH NUCLEAR WEAPONS?

I want to conclude by putting the abolition of nuclear weapons in a larger context. There are many reasons to abolish nuclear weapons. But there's a very important reason for abolition which does not get enough attention. That is that it is essential to the preservation and development of the international legal order. A just and therefore sustainable legal order requires that the same rules apply to all.

One manifestation of the instability caused by the possession of nuclear weapons by some states but not others is the doctrine of preventive war. That doctrine was put into practice in the Iraq invasion and the recent Israeli strike on Syria and is raised with respect to Iran. Preventive war is contrary to the UN Charter. Success in global nuclear abolition is therefore essential for preservation of the system of collective security and international law centered on the UN Charter.

Abolition of nuclear weapons is also needed for effectively managing the other grave problems faced by the human species. The current two-tier regime, with nuclear haves and have-nots, does not give rise to an equitable and therefore viable global political and legal order. So elimination of the two-tier system, along with elimination of weapons themselves, is needed in order to effectively tackle other serious problems facing the world: among them poverty, climate change and other threats to the environment, and disease. In short, as the title of our conference has it, a "Peaceful, Just and Sustainable World" is also a "Nuclear Free World."