

THE Lawyers Committee on Nuclear Policy INC.

866 UN Plaza, Suite 4050
New York, NY 10017-1936 USA
tel 212-818-1861; fax 212-818-1857
contact@lcnp.org; www.lcnp.org

UN Office



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Lawyers Against Nuclear Arms

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November 19, 2014

Chuck Hagel, Secretary of Defense

Ernest Moniz, Secretary of Energy

John Kerry, Secretary of State

Dear Secretary Hagel, Secretary Moniz, and Secretary Kerry:

We are writing with respect to issues under international law which are raised by current plans for the modernization of the U.S. nuclear arsenal. While there has been extensive discussion as to the enormous cost of the proposed modernization,¹ much less attention has been focused on the legal implications, including issues of treaty compliance under Article VI of the Nuclear Non-Proliferation Treaty (NPT). These issues take on added importance on the eve of the 2015 NPT Review Conference, at a time when the entire nonproliferation regime is under increasing strain. **We urge that a legal review of the modernization program be conducted.**

Under Article VI of the NPT all of the state parties undertake "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. The International Court of Justice has held that Article VI of the NPT creates 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."² The nuclear weapon states, including the United States, have repeatedly recognized the need to comply with Article VI.

For example, at the 2010 NPT Review Conference, all state parties made an explicit commitment to pursue policies "fully compatible" with "the objective of

¹ See, e.g., Congressional Budget Office, "Projected Costs of U.S. Nuclear Forces, 2014-2023," <http://www.cbo.gov/sites/default/files/12-19-2013-NuclearForces.pdf>; Arms Control Association, "The Unaffordable Arsenal," <http://www.armscontrol.org/files/The-Unaffordable-Arsenal-2014.pdf>

² 1996 Advisory Opinion of the ICJ, para.105(2)F

achieving a world without nuclear weapons.”³ At the 2000 Review Conference and again in 2010, the states parties committed to a “diminishing role for nuclear weapons in security policies to minimize the risk that these weapons will ever be used and to facilitate the process of their total elimination.”⁴ Specifically as to modernization, all parties to the NPT have recognized “the interests of non-nuclear weapon states in the constraining by the nuclear weapons states of the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons.”⁵ Under fundamental international law principles of good faith,⁶ all parties to the NPT are obligated to refrain from actions contrary to its purposes and objectives.

Consistent with these obligations, the United States has frequently affirmed that it will diminish the role of nuclear weapons in national security policy,⁷ and will not develop new nuclear warheads, new nuclear missions, or new nuclear capabilities.⁸ These assurances have been repeated as recently as October 20, 2014, in Ambassador Wood’s speech in the United Nations General Assembly Thematic Debate on Nuclear Weapons.

Aspects of the proposed nuclear arsenal modification raise serious questions as to compliance with these principles. A prime example is the Air Force proposal for development of a new, enhanced long range stand-off air launched cruise missile (LRSO ALCM). On its face, the estimated expenditure of tens of billions of dollars⁹ on a weapons system not to be deployed before 2027 seems clearly inconsistent with a good faith commitment to negotiate an end to the nuclear arms race “at an early date.” Further specific concerns have been raised by some of the arguments advanced¹⁰ to justify the LRSO ALCM:

-While acknowledging that the U.S. already has an ample supply of ground-launched and sea-launched ballistic missiles capable of hitting all of the LRSO ALCM’s projected targets, spokespersons for the military have been quoted as saying that development of the LRSO ALCM will provide “lower yield options” and more “targeting flexibility.” This amounts to saying that the new weapons system will provide new nuclear capabilities, directly contrary to the repeated assurances discussed above.

-In explaining why the Air Force needs both a new penetration bomber and the LRSO ALCM, military spokesmen have asserted that future improvements in air defenses might render the penetration bomber vulnerable, and that the LRSO ALCM could be used to create gaps in those defenses to allow the bomber to get through. However, since the mission of degrading air defenses is currently entrusted to conventional missiles, such as the JASSM, this would mean increasing rather than diminishing the role of nuclear weapons in national security policy, contrary to assurances given under the NPT as discussed above.

³ 2010 Final Document, Action Plan on Nuclear Disarmament, Action 1

⁴ 2000 Final Document, 13 Practical Steps, Article VI, 15(9)

⁵ 2010 NPT Review Conference Final Document I(b)(4)

⁶ See, e.g., Vienna Convention on the Law of Treaties, Article 26: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

⁷ E.g., U.S. Department of Defense, Nuclear Posture Review Report, April 2010, <http://www.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf> .p.5

⁸ Id., p.39

⁹ Federation of American Scientists, “W80-1 Warhead Selected for New Nuclear Cruise Missile,” October 10, 2014, http://fas.org/blogs/security/2014/10/w80-1_lrso/

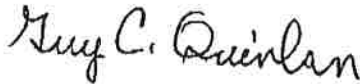
¹⁰ N.9, supra

-General Wilson has been quoted as saying that development of the LRSO ALCM could result in "a very strong deterrent" by making possible an increased total number of warheads ("very close to the same capacity as a sub"). It is difficult to understand why it would be necessary to increase the number of deployed warheads, since the Pentagon has acknowledged that the New START limits could safely be reduced further. Moreover, any attempt to in effect circumvent the deployed warhead limits of New START, through use of the bomber counting rule, would inevitably provoke a seriously destabilizing Russian response. It would be difficult to imagine an action more clearly contrary to a good faith pursuit of nuclear disarmament.

Similar instances pervade the proposed modernization program. The continuing development deep into this century of enhanced and enormously expensive nuclear weapons systems, many of them with added capabilities (e.g., the modifications to the B-61 gravity bomb), is clearly inconsistent with the goal of seeking genuine nuclear disarmament. Recent discussions of cutting conventional forces, in order to pay for the new nuclear weapons, further contravene the stated goal by increasing the importance of nuclear weapons in national security policy.

We urge that the entire modernization program should be carefully re-examined as to compliance with treaty obligations, and that counsel for the White House and for the Departments of State, Defense and Energy should be involved in that re-examination.

Very truly yours,



Guy Quinlan, President



John Burroughs, Executive Director

cc:

Elizabeth Sherwood-Randall, Deputy Secretary of Energy

Rose Gottemoeller, Under Secretary of State for Arms Control and International Security

Madelyn Creedon, Assistant Secretary of Defense for Global Strategic Affairs

Susan Rice, National Security Advisor

Ben Rhodes, Deputy National Security Advisor