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## Viewpoint

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# No First Use of Nuclear Weapons

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On December 10, 2002, the Bush administration published a statement that the United States “will continue to make clear that it reserves the right to respond with overwhelming force—including through resort to all our options—to the use of [weapons of mass destruction] against the United States, our forces abroad and friends and allies.”<sup>1</sup> This statement, part of the administration’s strategy for combating the proliferation of weapons of mass destruction (WMD) is the clearest and most recent enunciation of the hedged U.S. position on no first use of nuclear weapons. But while more explicit than earlier statements by previous administrations, it did not really come as a surprise.

U.S. State Department spokesman Richard Boucher had already reiterated the United States’ long-standing official position on no first use of nuclear weapons in February 2002:

The United States reaffirms that it will not use nuclear weapons against non-nuclear-weapons States parties to the Treaty on the Non-Proliferation of Nuclear Weapons except in the case of an invasion or any other attack on the United States, its territories, its armed forces or any other troops, its allies or States towards

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>2</sup>

However, Boucher also remarked at the press conference that

...U.S. policy says that we will do whatever is necessary to deter the use of weapons of mass destruction against the United States, its allies and its interests. If a weapon of mass destruction is used against the United States or its allies, we will not rule out any specific type of military response.<sup>3</sup>

Thus, characteristically, the United States was diplomatically disavowing the use of nuclear weapons except in certain extreme circumstances, and yet at the same time, hedging the disavowal to allow the greatest possible latitude for the use of nuclear weapons. And such a contradictory policy is by no means restricted to the current U.S. administration. For example, in April 1996, during the Clinton administration, Secretary of Defense William Perry said that if the United States was attacked by chemical weapons, “We could have a devastating response without the use of nuclear weapons, but we would not forswear that possibility.”

The U.S. formulation of no-first-use policy, with only a slight variation, was first stated by the United States at a UN Special Session on Disarmament in 1978. And most importantly, it was repeated just prior to the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)—as one element of U.S. policy aimed at persuading non-nuclear weapons states to agree to indefinite extension of the NPT. At that time, three of the other four declared nuclear weapon states (the United Kingdom, France, and Russia) issued no-first-use declarations essentially the same as that of the United States. The fourth declared state, China, issued a more categorical, less hedged, statement consistent with the stance that China had long taken not to be the first to use nuclear weapons at any time under any circumstances.

The increasing hedging of the U.S. no-first-use commitment, vividly illustrated in the December 2002 WMD proliferation strategy noted above, is unwise. Now is not the time—as terrorist use of nuclear weapons has emerged as a potential nightmare, India and Pakistan trade plausible nuclear threats, and North Korea threatens to develop and even sell nuclear weapons—for the United States to undermine the fifty-plus year nuclear taboo. Certainly, nothing would make the use of nuclear weapons by terrorists or states more likely than the prior use of nuclear weapons by the United States (or any other country). In addition, the use of nuclear weapons by the United States or another nuclear weapon state could shatter the NPT regime and lead to the rapid spread of nuclear weapons to several more countries.

This viewpoint argues not only that the United States stop the persistent hedging, but adopt a stark, unambiguous no-first-use policy. The principal focus of this viewpoint is the position of the United States. First of all, the United States has long exerted a leadership role that shapes how other countries think about nuclear weapons. Second and more important, as we have already indicated, even the hedged U.S. version of no first use is coming under assault from many in the Bush administration. And as this viewpoint concludes, it would be a serious misstep for the United States to move even further away from a no-first-use policy.

## THE HISTORY OF NO FIRST USE

In the years immediately following WWII, President Harry Truman had conflicted views on the usability of nuclear weapons. Evidently as late as 1948, he was tell-

ing the military they could plan for using nuclear weapons but should not count on using them—an interesting formulation. But soon after the first Soviet nuclear test, official national defense policy explicitly included the possible first use of nuclear weapons. In NSC-68 in 1950, National Security Advisor Paul Nitze wrote, “No first use would be interpreted by the USSR as an admission of great weakness and by our allies as a clear indication that we intended to abandon them.”

Later, President Eisenhower made a first-use doctrine explicit. The administration’s national security policy, outlined in NSC 162/2 in 1953, stated, “In the event of hostilities, the United States will consider nuclear weapons to be as available for use as other munitions.”<sup>4</sup> This policy was quickly accepted by the United States’ main allies, and a year later, in December 1954, NATO agreed to integrate tactical nuclear weapons into the forces structured to counter conventional attack by the Soviet Union and its allies.

And so matters stood until the late 1960s when the nuclear weapon states modified their nuclear weapons policies to prevent nuclear proliferation. In the negotiations that eventually produced the NPT, the non-nuclear-weapon states, particularly states from the Non-Aligned Movement, sought means to protect themselves against the possible use, or threat of use, of nuclear weapons. In exchange, these states would offer their commitment not to develop nuclear weapons. While the non-nuclear-weapon states wanted guarantees against the use or threat of use of nuclear weapons, the United Kingdom, the United States, and the Soviet Union took the position that the matter should be pursued “in the context of action relating to the UN, outside the Treaty [NPT] itself but in close conjunction with it.”<sup>5</sup>

The UN Security Council, then, acting on an initiative of the United Kingdom, the United States, and the Soviet Union, adopted Resolution 255 (1968) accepting that the Council “would have to act immediately to provide assistance, in accordance with their obligations under the United Nations Charter,” to a state victim of an act of nuclear weapons aggression or object of a threat of such aggression. This “positive” security assurance was welcomed by the non-nuclear-weapon states, but many indicated that such commitment fell short of their expectations and continued to express the need for a “negative” assurance—a legally binding commitment by the nuclear-weapon states not to use nuclear weapons against non-nuclear-weapon states.<sup>6</sup>

To this end, the United States and its nuclear allies, France and the United Kingdom, also accepted limited constraints on the use of nuclear weapons by joining a protocol not to use nuclear weapons against parties to the Latin American NWFZ (in a protocol to the Treaty of Tlatelolco). Later, they accepted similar constraints with respect to nuclear-weapon-free zones in the South Pacific and Africa (in protocols to the Treaties of Raratonga and Pelindaba, respectively). In the case of the last two agreements, it should be noted that although the U.S. government has signed them, neither has been ratified by the U.S. Senate.

In June 1982, the Soviet Union undertook a unilateral pledge not to resort to the first use of nuclear weapons. How seriously the Soviet Union regarded this commitment is open to debate. For example, Therese Delpech, of the French Foreign Office, has written that:

...military records of the Warsaw Pact that fell into German hands demonstrated beyond doubt that Russian operational plans called for the use of nuclear and chemical weapons in Germany at the onset of hostilities, even if NATO forces were using only conventional weapons—this at a time when the Russian official doctrine was no first use.<sup>7</sup>

Delpech concludes that “The result of [this] discovery is to suggest that no-first-use pledges constitute a declaratory policy without military significance.” This is a view to which we will return and which we will contest later.

The end of the Cold War might have been expected to lead countries to re-evaluate their no-first-use doctrine, but so far, at least, it has not had such an effect. Thus, when German Foreign Minister Joschka Fisher proposed in 1998 that NATO reconsider its old Cold War policy of first use he was roundly rebuffed. Echoing U.S. government sentiment, a French government official declared that a no-first-use policy “would not be compatible with deterrence,” while a British colleague argued NATO was “better served by the current policy because it maintains an important degree of uncertainty in the minds of potential aggressors.”<sup>8</sup>

For Russia, the end of the Cold War did impact the country’s no-first-use policy—but in an unexpected direction. In 1993—facing a precipitous drop in conventional military strength—Russia renounced the 1982 Soviet policy of no first use, and changed its declaratory policy to maintaining the option to use nuclear weapons against any nuclear armed aggressor, including non-nuclear states allied with a nuclear weapons state—a formulation, as

already indicated, essentially the same as that of the NATO nuclear weapon states. China, by contrast, remains the only declared nuclear weapons state that has maintained a largely unhedged no-first-use policy, and in 1995 reiterated its commitment that “China undertakes not to be the first to use nuclear weapons at any time or under any circumstances.”

The adoption of hedged no-first-use policies by some of the nuclear weapon states, however, has had ill-considered consequences. In justifying its nuclear weapons program, the Indian government noted in 1998 that because “there is no evidence yet on the part of the nuclear weapon states to take decisive and irreversible steps in moving towards a nuclear-weapon-free-world,” and because some of the nuclear weapons states “have doctrines that permit the first use of nuclear weapons,” India was left with little choice but “to take necessary steps to ensure that the country’s nuclear option, developed and safeguarded over decades not be permitted to erode by a voluntary self-imposed restraint.”<sup>9</sup> Pakistan, in turn, responded to India by accelerating its own nuclear weapons development program.

India and Pakistan, however, have adopted different formal positions on no first use. In India’s Draft Nuclear Doctrine, it notes that

[T]he fundamental purpose of Indian nuclear weapons is to deter the use and threat of use of nuclear weapons by any State or entity against India and its forces. India will not be the first to initiate a nuclear strike, but will respond with punitive retaliation should deterrence fail; ... India will not resort to the use or threat of use of nuclear weapons against States which do not possess nuclear weapons, or are not aligned with nuclear weapon powers.

Contrary to India, Pakistan has adopted a first-use doctrine and has aggressively threatened the use of nuclear weapon on at least four occasions, in 1987, 1990, 1999, and June 2002.<sup>10</sup> According to one Pakistani military writer, Pakistan retains the option of first use of nuclear weapons because it recognizes that India has a superior conventional army, and—as NATO during the Cold War—sees nuclear weapons as offsetting India’s superiority in manpower and conventional weapons.

Israel, which does not acknowledge that it possesses nuclear weapons, consequently has no official nuclear deterrence policy. And, as far as is known, the Israel Defense Forces do not incorporate nuclear weapons in their military doctrine. Nevertheless, according to Avner Cohen in *Israel and the Bomb*, the Israel defense establish-

ment as early as 1966 implied that it would use nuclear weapons if certain “red lines” were crossed.<sup>11</sup> These “red lines” included a successful Arab penetration into populated areas within Israel’s post-1949 borders, the destruction of the Israeli Air Force, the exposure of Israeli cities to massive and devastating air attacks or to possible chemical or biological attacks, and the use of nuclear weapons against Israeli territory. Each of these threats was defined as an existential threat to the State of Israel.

### **THE CASE FOR A STRONG NO-FIRST-USE POLICY**

The case for an unhedged no-first-use nuclear policy by the United States rests on three grounds:

1. The United States does not need nuclear weapons to deter or to respond to attacks on us or our allies, including attacks by chemical or biological weapons.<sup>12</sup>
2. The actual first use of nuclear weapons by the United States would have calamitous consequences for international security, including the likely shattering of the NPT.
3. An explicit no-first-use policy would further bolster an already powerful taboo against nuclear use.

Although some defense planners have dreamed up scenarios where the first use of nuclear weapons could, in principle, make military sense, these scenarios appear remote from reality. By contrast, holding open the option for first use does concrete and predictable harm, to say nothing of making the actual use of nuclear weapons more likely.

### **Why a Hedged No-First-Use Policy is Unnecessary**

First of all it should be clear that the current no-first-use hedge of the United States is an anachronistic residue of the Cold War, and has little or no relevance today. This hedge, it will be recalled, is that the United States will not use nuclear weapons against non-nuclear-weapon states parties to the NPT

except in the case of an invasion or any other attack on the United States, its territories, its armed forces or any other troops, its allies or States towards 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.

This elaborate condition was devised to allow United States first use if the Soviet Union attacked into Western Europe. This scenario is of no relevance today. Nor is it

evident what other contingencies the United States might have in mind. We worry sometimes about China; but with what non-nuclear country would China ally itself in an attack on the United States or its allies?

So it is not the old threats from the Soviet Union or Russia that lead the United States to shy away from an explicit and plain no-first-use commitment, but rather new concerns about what the United States has variously termed rogue states, states of concern, or members of an axis of evil. It is Iraq, Iran, North Korea, perhaps Libya, and a few other countries that could limit its freedom of action that the United States has in mind when it considers the possibility of first use.

### **Deterrence of WMD Acquisition?**

Is the ratcheting up of a U.S. nuclear threat likely to deter such countries from developing chemical, biological, or nuclear weapons? Or, to look at matters the other way, is a strong no-first-use commitment by the United States likely to encourage countries to go ahead with programs to develop such weapons? Both propositions seem doubtful. The countries which have abandoned (at least for the time being) their quest for nuclear weapons, such as Argentina, Brazil, Germany, Japan, South Africa, South Korea, and Taiwan, are the countries least threatened by the United States.

On the contrary, it is those countries that feel most threatened by the use of nuclear weapons (particularly the so-called “Axis of Evil”) which appear the most inclined to develop a nuclear deterrent. North Korea is a case in point. Although it already had embarked on nuclear weapons activities in violation of the NPT and of the Agreed Framework of 1994, well before President Bush’s “Axis of Evil” speech, North Korea did signal that it was ready to negotiate with the United States and—tellingly—demanded, as part of such negotiations, that the United States agree to a nonaggression pact.

### **Deterrence and Pre-Emption of WMD Use?**

The principal argument that is raised against an unhedged no-first-use commitment by the United States is that a first-use threat is needed to deter the prior use of other weapons of mass destruction or actually to destroy such weapons at the onset of hostilities. This contingency is the focus of the December 2002 strategy to combat the proliferation of WMD, and it harkens back to statements made by the United States prior to the Gulf War, where James Baker notes in his memoirs that “I purposely left

the impression that the use of chemical or biological agents by Iraq could invite tactical nuclear retaliation.” Some will favor, at the least, amending a policy of no first use of *nuclear weapons* to one of no first use of *weapons of mass destruction*. We believe that all such arguments are unpersuasive.

First of all, it is important to stress that whereas nuclear weapons are truly weapons of mass destruction, chemical and biological weapons are much less so. Chemical weapons can wreak havoc on a battlefield against unprotected troops, or on civilian populations in constrained areas, but while a chemical attack on an urban area could arguably kill thousands, it cannot compare with the use of nuclear weapons against cities. Some biological weapons can theoretically kill hundreds of thousands or more; but weaponizing biological agents so these agents could be efficiently dispersed is a difficult task. For the most plausible biological agents, such as anthrax, the lethality of use would be more comparable to chemical weapons than to nuclear.

Thus a nuclear response to chemical or biological weapon use would in most instances be out of all proportion to the initial attack, and thus politically and morally indefensible. Certainly, the United States would (or should) never contemplate using nuclear weapons against population centers in response to attacks on U.S. troops or allies (the most likely kind of attack by a rogue state), even if such an attack employed chemical or biological agents. As Seth Cropsey has noted,

The utter destruction of, for example, Iraqi or North Korean civilian population centers as a response to a one or two weapon attack on their most likely American targets—military bases or personnel stationed on foreign soil—would be extremely unjust. ...It would wreak such disproportionate vengeance on both the intended target and its neighbors downwind that the strategy is barely a credible deterrent.<sup>13</sup>

The use of low-yield nuclear weapons to destroy chemical and biological agents or command centers buried in deep bunkers, without doing great damage to the above-ground population and structures, appears to be the scenario driving U.S. interest in preserving a first-use option today. Thus, for example, in the spring of 2003, Congress agreed to soften a 1994 amendment that prevented research on and development of low-yield nuclear weapons, with the new stipulation being that research is permitted, though still not development. The Defense Authorization Act of 2003 had already approved funding to the weapons labs to study bunker-busting

nuclear weapons. But the use of nuclear bunker busters is an elusive goal, as has been made clear in recent articles by Robert Nelson, of Princeton University and the Council on Foreign Relations,<sup>14</sup> and by Sidney Drell, James Goodby, Raymond Jeanloz, and Robert Peurifoy.<sup>15</sup>

These authors have made a number of points regarding the use of such earth-penetrating nuclear weapons. If the location of chemical and biological weapons in a maze of underground bunkers is known with precision (still a requirement for the use of earth-penetrating nuclear weapons) there should be better ways to contain and eventually destroy them. One way would be to destroy all the entrances to the bunker complex. Another way would be through the use of conventional weapons. The United States already has a number of conventional weapons capable of destroying hardened targets buried at depths up to 50 feet from the surface.

If the bunkers and the location of weapons within the bunkers are not known precisely, or if the bunkers are very deep, the use of any nuclear weapon capable of destroying a buried target will necessarily produce enormous numbers of civilian casualties.<sup>16</sup> In some circumstances, the use of nuclear weapons against WMD targets could actually make matters worse. According to Stephen M. Younger, director of the Defense Threat Reduction Agency, the use of nuclear weapons against WMD facilities risks expelling the agents into the atmosphere and spreading them into the surrounding region.<sup>17</sup>

### **Deterrence of Conventional Attacks?**

Will the United States require nuclear weapons to repulse conventional attacks on U.S. forces or on our allies? This is doubtful in the extreme. As even the latest Nuclear Posture Review admits, United States nuclear forces are unsuited to most of the contingencies for which the United States prepares.<sup>18</sup> Instead, the United States has developed an arsenal of sophisticated modern weapons including precision guided “smart” munitions, automatically guided weapons, cluster munitions, and enhanced blast munitions that can approach the destructive potential of nuclear weapons in performing specific military requirements.

### **The Role of Uncertainty?**

Even many who view the first use of nuclear weapons by the United States as unwise and unnecessary, still oppose a no-first-use commitment on grounds that it would reduce enemy uncertainties. Thus for example, Seth

Cropsey, who otherwise argues persuasively against any kind of reliance on nuclear use, nevertheless asserts that “[t]he United States should not rule out the use of nuclear weapons entirely. Uncertainty about American nuclear retaliation still forces an enemy to think seriously.”

This argument has some merit. However, whatever the U.S. declaratory policy, no enemy could ever be really sure that the United States meant it. Which country would count on no U.S. nuclear response to a devastating chemical or biological weapon attack? The uncertainty created by U.S. hedges will have greater effect on the planning and thinking of the U.S. military and civilian leadership. The broader the hedge, the less ardently will the U.S. military develop strategies, tactics, and weapons to deal with various hypothetical contingencies, and the sharper will be the arguments for the military to use nuclear weapons in some crisis.

### INTERNATIONAL IMPLICATIONS OF FIRST USE

In contrast to the dubious advantages marshaled in support of the United States maintaining the flexibility to use nuclear weapons first, the tremendous risks inherent in their actual use are apparent.

The use of nuclear weapons would badly shake the foundations of the NPT. Certainly, the use of nuclear weapons against a non-nuclear-weapon state party to the NPT—for example, as a preemptive attack on chemical and biological agents—would constitute for many countries (not just the one attacked) compelling grounds to invoke the NPT withdrawal clause, allowing withdrawal from the treaty on grounds of “extraordinary events related to the subject of the treaty.”

Indeed, if a non-nuclear weapon state is attacked with nuclear weapons, it would certainly dramatically increase incentives for non-nuclear weapons states to develop their own deterrence capability built on nuclear weapons. How else could a country deter the United States? At least some countries are likely to take this position. In fact, the continued reliance on hedged no-first-use policies by the United States and other nuclear powers is often one of the rationales nuclear weapons advocates from non-nuclear-weapons states offer as justification for abandoning NPT commitments and developing their own nuclear weapons.<sup>19</sup>

The actual use of nuclear weapons by the United States also holds the risk of destroying the nuclear taboo for terrorists and states alike. The common wisdom before 9/11 was that terrorists do not seek to inflict maximum damage, but rather to do something spectacular to call

attention to specific grievances. After 9/11, common wisdom swung to the opposite extreme—that terrorists will inflict whatever damage they can. For some terrorist groups this conclusion may be correct. But it may not be true for all groups, or even for most. Terrorists may shy away from unleashing weapons of mass destruction on a grand scale for many reasons—a reluctance to cause mass casualties of non-combatants, a concern that their religion or cause would be discredited, a fear of a massive retaliation against people they hold dear, or any number of other reasons. In these circumstances, it is imperative that countries strengthen, not blur, the critical distinction between combatants and non-combatants. It is hard to think of any action that would more deeply undermine the taboo against killing large numbers of civilians than first nuclear use by the United States, which would almost certainly involve significant numbers of civilian casualties. Another potential negative effect of nuclear first use by the United States is that it could encourage other countries—Russia in Chechnya, China on its periphery, Pakistan or India in Kashmir—to also use nuclear weapons if such use looked militarily useful.

### IMPLEMENTATION: STRENGTHENING THE NUCLEAR TABOO

Since the end of the Cold War, an international consensus has coalesced around the principle that the use of nuclear weapons—if not patently illegal—should be legal only in very limited and exceptional circumstances. The 1996 International Court of Justice (ICJ) advisory opinion on the “Legality of the Threat and Use of Nuclear Weapons” expressed this view eloquently. In particular, the court held unanimously that any resort to self-defense could be legal only if the act of self-defense is “proportional to the armed attack and necessary to respond to it.” If such an attack were necessary and proportional, it would also have to observe “intransgressible” international humanitarian law, which requires that “States must never make civilians the object of attack and *must never use weapons that are incapable of distinguishing between civilian and military targets.*” (Emphasis added.) The court then argued at length that nuclear weapons were incapable of making any such distinction.

The need to act proportionally and avoid to the extent possible injury to civilians arises out of just war doctrine and is widely accepted and incorporated in U.S. military doctrine and law. The reasoning behind this stance rests not just on moral principle and international law, but also stems from the conclusion that behaving justly

in war is important to winning public support, both in the United States, in the countries being attacked (such as in Iraq), and in third countries as well. From this point of view, however, there is no weapon more likely to be disproportionate and unable to distinguish between combatants and civilians than a nuclear weapon.

### **Belligerent Reprisals**

One adumbration on no first use which the United States has employed to somehow square its present no-first-use policy with a desire to threaten first use in certain circumstances should, in our view, be forgone. This is the so-called doctrine of "belligerent reprisal." This doctrine was resuscitated in 1996 by the Clinton administration to get out of a difficult diplomatic quandary triggered by the recently concluded Treaty of Pelindaba, which established the African NWFZ (ANWFZ). Under Protocol 1 of this treaty, nuclear weapon states agree not to use or threaten to use nuclear weapons against parties to the treaty. In general, the United States welcomed the agreement by the African states. Initially, the State Department and the White House saw no difficulties in signing the protocol. (The United States had signed a similar protocol to the Latin American NWFZ treaty many years earlier.) But some in the Defense Department opposed the protocol on grounds that it would reduce U.S. flexibility.

The United States did end up signing the Protocol without any formal reservation. However, in a press briefing the same day of signature, Robert Bell of the National Security Council, stated: "Under Protocol I, which we signed, each party pledges not to use nuclear weapons against an ANWFZ party. However, Protocol I will not limit options available to the United States in response to an attack by an ANWFZ party using weapons of mass destruction." The exception was explained by dint of a little-used, and some would say anachronistic,<sup>20</sup> element of international law, "belligerent reprisal," which allows states to retaliate against illegal acts by adversaries in wartime.<sup>21</sup>

Still, even if this "right" is accepted by the international community, belligerent reprisal does not give carte blanche to the U.S. military. As indicated in the U.S. Army's *The Law of Land Warfare*, however, "Other means of securing compliance with the law of war should normally be exhausted before resort is had to reprisals. This course should be pursued unless the safety of the troops requires immediate drastic action...."<sup>22</sup> Furthermore, reprisals against protected civilians are prohibited, and

reprisals may never be adopted merely for revenge, but only as an "unavoidable last resort to induce the enemy to desist from unlawful practice." Even if an act of reprisal is lawful, the act "should not be excessive or exceed the degree of violence committed by the enemy."<sup>23</sup> In all these respects, nuclear use is unlikely ever to truly meet the legal requirements for belligerent reprisal. Its invocation appears to be nothing more than an invitation for other countries, as well as the United States, not to take a no-first-use commitment seriously.

### **Strengthening the NPT and the Nonproliferation Regime**

At the NPT Review Conferences of 1995 and 2000, many of the non-nuclear-weapon states argued strongly for legally binding security assurances by the nuclear weapons states against the use or threat of use of nuclear weapons.<sup>24</sup> The Final Document of the 2000 NPT Review Conference stated that:

The Conference agrees that legally binding security assurances by the five nuclear-weapon states to the non-nuclear-weapon states to the Treaty [would] strengthen the nuclear non-proliferation regime. The Conference calls upon the Preparatory Committee to make recommendations to the 2005 Review Conference on this issue.<sup>25</sup>

And indeed, at the 2003 PrepCom meeting, many NPT parties again stressed that negotiations to conclude a universal, unconditional, and legally binding instrument on security assurances to non-nuclear-weapon states should be a priority.<sup>26</sup>

### **The Form of a No-First-Use Commitment**

Countries advocating a legally binding no-first-use commitment emphasize that the commitment should go beyond simple declarations of intent, which could be unilaterally revoked. Rather, the commitments should involve something more, possibly embedded in a protocol of some kind to the NPT, a new treaty, or a UN Security Council resolution. There would be great value in such a commitment regardless of the exact form it would take. Nevertheless, the primary focus of this viewpoint is not this type of legally binding commitment, but rather the declaratory policy of the nuclear weapon states themselves, especially the United States.

Along with the distinction between legally binding and declaratory commitments, there is also the question of whether the commitments should be directed only to non-nuclear-weapon states that are parties to the NPT,

thereby giving further incentives to nonparties, such as India, Pakistan, and Israel, to join the NPT as non-nuclear-weapon states. With this question too, the distinction between legally binding and declaratory commitments is relevant. And a strong case may be made for extending legally binding commitments directly to the non-nuclear-weapon state parties to the NPT.

But for declaratory policies more generally (considering first the United States alone), in our view, the simplest, most direct, and most powerful approach is an unambiguous U.S. commitment not to use nuclear weapons first under any circumstances. The present formulation focusing on pledges to non-nuclear-weapon states may have seemed prudent when we were devising ways to persuade non-nuclear countries to agree to an indefinite extension of the NPT, or when we were concerned with Soviet aggression in Europe or elsewhere. But, such an approach is no longer necessary. To hold open the option for nuclear use against another nuclear weapon state is unnecessary and awkward, at a time when the United States is drawing closer to Russia and China, and U.S. relationships with India, Pakistan, or Israel are not conflictual. Even if not legally binding, strong, unhedged no-first-use commitments by the United States and other nuclear weapon states would strengthen the nonproliferation regime, and possibly also help set the stage for later, more binding, commitments.

It would be valuable for strong no-first-use commitments to be made by all the nuclear-weapon states, and one would hope that such commitments would follow a U.S. lead. But there is no reason for the United States to insist upon an international agreement before acting. The United States has undertaken unilateral initiatives in the past with the hope, later proven, that other states would follow suit—the most recent example being the 1991 decision by President George H.W. Bush to withdraw most U.S. tactical nuclear weapons from active deployment. In the case of a no-first-use pledge, a unilateral declaration by the United States would greatly increase pressure on other nuclear weapons states also to commit to no first use of nuclear weapons.

## CONCLUSION

Opponents of a strong no-first-use declaration by the United States generally rely on three arguments. The first is that the United States may need nuclear weapons to respond to chemical and biological weapon attacks by rogue countries. This argument mistakenly conflates

nuclear weapons with these other weapons of mass destruction, and in fact gives too much status to these “poor man’s nuclear weapons.” The second argument is that a no-first-use commitment can never be verified. While it is true that such a commitment is inherently uncertain, this uncertainty *supports* a no-first-use commitment, in that the country undertaking such a commitment will plan not to use nuclear weapons first, but other countries will never be quite sure that their potential adversary will never use nuclear weapons—and so nuclear use remains an existential deterrent regardless of declaratory policy. A third argument—that even if the United States would never actually use nuclear weapons, it is worthwhile to keep potential adversaries uncertain—is similarly flawed. Potential adversaries will always be uncertain. More important is to remove uncertainty from U.S. military commanders, who must never go into battle thinking they can rely on the use of nuclear weapons.

In extremis, of course, a U.S. administration might find compelling reason to override a no-first-use commitment, and actually use or explicitly threaten to use nuclear weapons. Such an act would be taken only in the most dire of circumstances, and in such a situation it is hard to believe that U.S. flaunting of a prior declaratory commitment would weigh much in how the world viewed the U.S. actions.

Thus, there is no compelling argument for the United States to maintain its nuclear hedge. The benefits for the United States and the international community of adopting a no-first-use posture far outweigh any marginal benefit of maintaining the option to use nuclear weapons first—an option the United States would be loathe to exercise except in the most extreme circumstances. Nuclear weapons may legally and morally be used under such a narrow range of circumstances that contemplating their use is not just pointless, but counterproductive.

<sup>1</sup> The White House, *National Strategy to Combat the Proliferation of Weapons of Mass Destruction*, December 2002, <<http://www.whitehouse.gov/news/releases/2002/12/WMDStrategy.pdf>>.

<sup>2</sup> U.S. Department of State, “Daily Press Briefing,” February 22, 2002, <<http://www.state.gov/t/pa/prs/dpb/2002/8421.htm>>

<sup>3</sup> *Ibid.* In this statement, Boucher continued, “Those kind [sic] of statements have been made repeatedly since the 1970s. Similar statements, as you remember, were made in the Gulf War in 1991 by U.S. officials.” Boucher then cited a 1996 statement by then Secretary of Defense William Perry quoted below.

<sup>4</sup> NSC 162/2, “Basic National Security Policy,” October 30, 1953, *Foreign Relations of the United States, 1952-1954, Volume II*, (Washington, DC: Government Printing Office), p. 593, cited in Nina Tannenwald, “Dogs That Don’t Bark: the United States, the Role of Norms, and the Non-Use of Nuclear Weapons,” Ph.D. dissertation, Cornell University, 1996, p. 171.

<sup>5</sup> Quoted in Jean du Preez, “Security Assurances Against the Use or Threat of



Use of Nuclear Weapons: Is Progress Possible at the NPT Prepcom?" Center for Nonproliferation Studies, Monterey Institute of International Studies, Monterey, CA, April 28, 2003, <<http://www.cns.miis.edu/research/npt/nptsec.htm>>.

<sup>6</sup> Ibid.

<sup>7</sup> Therese Delpech, "New Stages of Nuclear Disarmament: A European View," in H.A. Feiveson, editor, *The Nuclear Turning Point*, (Washington, DC: The Brookings Institution, 1999), p. 335.

<sup>8</sup> Wade Boese, "Germany Raises No-First-Use Issue at NATO Meeting," *Arms Control Today* 28 (November/December 1998), <[http://www.armscontrol.org/act/1998\\_11-12/grnd98.asp](http://www.armscontrol.org/act/1998_11-12/grnd98.asp)>.

<sup>9</sup> Embassy of India in the United States, "Evolution of India's Nuclear Policy," May 27, 1998, <<http://www.indianembassy.org/pic/nuclearpolicy.htm>>.

<sup>10</sup> Edward Luce, "Three Minutes away from Disaster: India and Pakistan: Nuclear Weapons Have Transformed what was a Local Feud into a Standoff Watched by the World," *Financial Times* (London), July 11, 2002.

<sup>11</sup> Avner Cohen, *Israel and the Bomb* (New York: Columbia University Press, 1998), p. 137.

<sup>12</sup> We exclude from discussion here the deployment of nuclear weapons to deter nuclear attacks on the United States by Russia, China, or other nuclear weapon state. In such an event, the use of nuclear weapons by the United States would, of course, not be a *first* use.

<sup>13</sup> Seth Cropsey, "The Only Credible Deterrent," *Foreign Affairs* 73 (March/April 1994), pp. 14-20.

<sup>14</sup> Robert Nelson, "Low-Yield Earth Penetrating Nuclear Weapons," *Science & Global Security* 10 (2002), pp. 1-20.

<sup>15</sup> Sidney Drell, et al, "A Strategic Choice: New Bunker Busters Versus Nonproliferation," *Arms Control Today* 33 (March 2003), <[http://www.armscontrol.org/act/2003\\_03/drelletal\\_mar03.asp](http://www.armscontrol.org/act/2003_03/drelletal_mar03.asp)>.

<sup>16</sup> Nelson, "Low-Yield Earth Penetrating Nuclear Weapons," p. 1.

<sup>17</sup> Quoted in Thomas E. Ricks and Vernon Loeb, "Washington Developing Mili-

tary Policy of Striking First," *Washington Post*, June 10, 2002.

<sup>18</sup> The only examples of targets that may require nuclear weapons—and even this point is disputed—are deep underground bunkers or biological weapon facilities. Yet the Nuclear Posture Review also concedes that "these facilities are most difficult to defeat because of the depth of the facility and the uncertainty of the exact location."

<sup>19</sup> See for example, the op-ed by the Brazilian commentator, Ricardo C. Amaral, "We Need the Bomb," *Brazzil* (May 2002), <<http://www.brazzil.com/p24may02.htm>>.

<sup>20</sup> Frits Kalshoven, *Belligerent Reprisals*, Vol. I in the Scientific Collection of the Henry Dunant Institute (Leiden: A.W. Sijthoff, 1971), p. 377.

<sup>21</sup> Janne Nolan, *An Elusive Consensus* (Washington, DC: The Brookings Institution, 1999), Chapter 4. Bell's White House briefing took place on April 11, 1996.

<sup>22</sup> U.S. Department of the Army, *The Law of Land War*, Chapter 8, "Remedies for Violation of International Law; War Crimes," FM27-10, <<http://www.adtdl.army.mil/cgi-bin/atdl.dll/fm/27-10/toc.htm>>

<sup>23</sup> The 1977 Additional Protocol I expanded the prohibition on reprisals by prohibiting "all attacks against the civilian population or civilians by way of reprisal." Additional Protocol I, Article 51(6), <[www.icrc.org](http://www.icrc.org)>. In signing 1977 Protocol I, the US stated that its understanding that the rules therein were not intended to have any effect on and do not regulate or prohibit the use of nuclear weapons. The conferees also considered but rejected the idea of an absolute prohibition on reprisals.

<sup>24</sup> Jean du Preez, "Security Assurances Against the Use or Threat of Use of Nuclear Weapons," <<http://www.cns.miis.edu/research/npt/nptsec.htm>>.

<sup>25</sup> NPT/CONF.2000/28, quoted in Ibid.

<sup>26</sup> Jean du Preez, "2003 NPT Preparatory Committee: Progress Towards 2005 or Business as Usual?" Center for Nonproliferation Studies, Monterey Institute of International Studies, May 7, 2003, <<http://www.cns.miis.edu/research/npt/npt2k3fr.htm>>.